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1972 ANNOTATED

Issued December 2020

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Volume 19B

Title 85 to 89

(As Revised 2011)

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By the Editorial Staff of the Publisher

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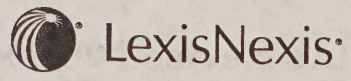

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

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85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment [Repealed effective July 1, 2019].

85-7-309. Applicability [Repealed effective July 1, 2019].

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85-7-313. No independent right of action to determine liability for injuries [Repealed effective July 1, 2019].

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TITLE 85.

DEBTOR-CREDITOR RELATIONSHIP

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CHAPTER 3.

EXEMPT PROPERTY

Sec.
85-3-1. Property exempt from seizure under execution or attachment.

§ 85-3-1. Property exempt from seizure under execution or attachment.

There shall be exempt from seizure under execution or attachment:

(a) Tangible personal property of the following kinds selected by the debtor, not exceeding Ten Thousand Dollars ($10,000.00) in cumulative value:

(i) Household goods, wearing apparel, books, animals or crops;

(ii) Motor vehicles;

(iii) Implements, professional books or tools of the trade;

(iv) Cash on hand;

(v) Professionally prescribed health aids;

(vi) Any items of tangible personal property worth less than Two Hundred Dollars ($200.00) each.

Household goods, as used in this paragraph (a), means clothing, furniture, appliances, one (1) radio and one (1) television, one (1) firearm, one (1) lawn mower, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the debtor and his dependents; however, works of art, electronic entertainment equipment (except one (1) television and one

(1) radio), jewelry (other than wedding rings), and items acquired as antiques are not included within the scope of the term "household goods." This paragraph (a) shall not apply to distress warrants issued for collection of taxes due the state or to wages described in Section 85-3-4.

(b)(i) The proceeds of insurance on property, real and personal, exempt from execution or attachment, and the proceeds of the sale of such property.

(ii) Income from disability insurance.

(c) All property in this state, real, personal and mixed, for the satisfaction of a judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan. As used in this paragraph (c), "pension or other retirement plan" includes:

(i) An annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;

(ii) An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and

(iii) An individual retirement account.

(d) One (1) mobile home, trailer, manufactured housing, or similar type dwelling owned and occupied as the primary residence by the debtor, not exceeding a value of Thirty Thousand Dollars ($30,000.00); in determining this value, existing encumbrances on the dwelling, including taxes and all other liens, shall first be deducted from the actual value of the dwelling. A debtor is not entitled to the exemption of a mobile home as personal property who claims a homestead exemption under Section 85-3-21, and the exemption shall not apply to collection of delinquent taxes under Sections 27-41-101 through 27-41-109.

(e) Assets held in, or monies payable to the participant or beneficiary from, whether vested or not, (i) a pension, profit-sharing, stock bonus or similar plan or contract established to provide retirement benefits for the participant or beneficiary and qualified under Section 401(a), 403(a), or 403(b) of the Internal Revenue Code (or corresponding provisions of any successor law), including a retirement plan for self-employed individuals qualified under one (1) of such enumerated sections, (ii) an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code (or corresponding provisions of any successor law), (iii) an individual retirement account or an individual retirement annuity within the meaning of Section 408 of the Internal Revenue Code (or corresponding provisions of any successor law), including a simplified employee pension plan, or (iv) a Roth individual retirement account within the meaning of Section 408A of the Internal Revenue Code (or corresponding provisions of any successor law).

(f) Monies paid into or, to the extent payments out are applied to tuition or other qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code or correspond-

ing provisions of any successor law, monies paid out of the assets of and the income from any validly existing qualified tuition program authorized under Section 529 of the Internal Revenue Code or corresponding provisions of any successor law, including, but not limited to, the Mississippi Prepaid Affordable College Tuition (MPACT) Program established under Sections 37-155-1 through 37-155-27 and the Mississippi Affordable College Savings (MACS) Program established under Sections 37-155-101 through 37-155-125.

(g) The assets of a health savings account, including any interest accrued thereon, established pursuant to a health savings account program as provided in the Health Savings Accounts Act (Sections 83-62-1 through 83-62-9).

(h) In addition to all other exemptions listed in this section, there shall be an additional exemption of property having a value of Fifty Thousand Dollars ($50,000.00) of whatever type, whether real, personal or mixed, tangible or intangible, including deposits of money, available to any Mississippi resident who is seventy (70) years of age or older.

(i) An amount not to exceed Five Thousand Dollars ($5,000.00) of earned income tax credit proceeds.

(j) An amount not to exceed Five Thousand Dollars ($5,000.00) of federal tax refund proceeds.

(k) An amount not to exceed Five Thousand Dollars ($5,000.00) of state tax refund proceeds.

(*l*) Subject to the provisions of Section 27-7-1003(2), the assets of a catastrophe savings account, including any interest accrued thereon, established under Sections 27-7-1001 through 27-7-1007.

(m) Nothing in this section shall in any way affect the rights or remedies of the holder or owner of a statutory lien or voluntary security interest.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (23); 1857, ch. 61, art. 280; 1871, § 2131; 1880, § 1244; 1892, § 1963; 1906, § 2139; Hemingway's 1917, § 1812; 1930, § 1755; 1942, § 307; Laws, 1932, ch. 138; Laws, 1948, ch. 232, § 1; Laws, 1962, 1st Ex Sess. ch. 7; Laws, 1966, ch. 318, § 1; Laws, 1980, ch. 540, § 1; Laws, 1981, ch. 469, § 3; Laws, 1987, ch. 473; Laws, 1991, ch. 479, § 7; Laws, 1995, ch. 565, § 1; Laws, 2002, ch. 594, § 1; Laws, 2006, ch. 595, § 1; Laws, 2008, ch. 557, § 1; Laws, 2015, ch. 457, § 6, eff from and after Jan. 1, 2015; Laws, 2020, ch. 326, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2015 amendment substituted "lawn mower" for "lawnmower" in the first sentence of the last paragraph of (a); and added (*l*).

The 2020 amendment, in (e), added (iv) and made a related change.

JUDICIAL DECISIONS

2. Exempt personal property generally.

Hospital's probated claim, while not invalid, was properly denied as uncollectable because the only asset of the estate was insurance proceeds received as a result of an unrelated motor-vehicle accident; after payment of attorneys' fees, the balance remaining in the estate was exempt from creditors. In re Estate of Mat-

ute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

In the event that the term "motor vehicles" was not clear and unambiguous so that the court should employ the canons of statutory construction to interpret the meaning of "motor vehicles" in Miss. Code Ann. § 85-3-1(a), the court found as follows: (1) in other Mississippi statutes, the ordinary use of "motor vehicles" included motorcycles, (2) the Mississippi Legislature used the term "motor vehicles" in § 85-3-1(a) without adding language to include some types of motor vehicles but not others, (3) the sections of the Mississippi Code that discussed motorcycles demonstrated that for the purposes of traffic regulation, conveyance, registration, and taxation, the Mississippi Legislature considered motorcycles to be a type of motor vehicles. Without indication to the contrary, there was no reason to presume that the Mississippi Legislature had any different intent with respect to its treatment of motorcycles under the Exemption Statute. In re Clemons, 441 B.R. 519, 2010 Bankr. LEXIS 2943 (Bankr. N.D. Miss. 2010).

Term "motor vehicles" is clear and unambiguous and should be given its plain meaning; furthermore, (i) the plain meaning of "motor vehicles" includes motorcycles, (ii) if the Mississippi Legislature had desired to narrow the types of "motor vehicles" affected by the Exemption Statute, Miss. Code Ann. § 85-3-1, it certainly knew how to add restricting language to accomplish that goal, and (iii) accordingly, motorcycles fall within the category "motor vehicles" and as such are a type of tangible personal property included in § 85-3-1. A debtor may, therefore, claim a motorcycle as exempt property pursuant to § 85-3-1. In re Clemons, 441 B.R. 519, 2010 Bankr. LEXIS 2943 (Bankr. N.D. Miss. 2010).

RESEARCH REFERENCES

ALR.

Construction and Application of Exemption for Firearms under State Law. 46 A.L.R.6th 401.

Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

§ 85-3-4. Execution or attachment of wages, salaries or other compensation; limitations.

JUDICIAL DECISIONS

2. Obligee no longer has custody.

Under Miss. Ann. § 85-3-4(2)(a)(i), the trial court erred in ordering 55 percent, rather than 25 percent, withheld from a father's disposable income, because when a judgment was awarded to the mother for past-due child support, she no longer had custody of the child. Reasor v. Jordan, 110 So. 3d 307, 2013 Miss. LEXIS 144 (Miss. 2013).

§ 85-3-17. Judgment for personal injury.

JUDICIAL DECISIONS

1. In general.

Hospital's probated claim, while not invalid, was properly denied as uncollectable because the only asset of the estate was insurance proceeds received as a result of an unrelated motor-vehicle accident; after payment of attorneys' fees, the balance remaining in the estate was exempt from creditors. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

§ 85-3-21. Homestead exemption; land and buildings.

JUDICIAL DECISIONS

ANALYSIS

5. Persons entitled.
6. Rights of survivors.
16. Waiver.
17. Relation to other statutes.

5. Persons entitled.

Joint debtors were not permitted to separately claim the $75,000 homestead exemption, effectively allowing them to exempt equity of $150,000, because the homestead exemption did not provide for more than one homestead exemption to be applied to a single residence, regardless of how many individual debtors resided therein. In re Pace, 521 B.R. 124, 2014 Bankr. LEXIS 4341 (Bankr. N.D. Miss. 2014).

6. Rights of survivors.

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

16. Waiver.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

17. Relation to other statutes.

Section relation to partition of land prohibits the partition of spousal homestead property by chancery decree because the phrase "homestead property exempt from execution" is not intended to bring specific limitations on creditors' rights to other statutes. Therefore, a chancery court could not enter a partition of land owned by spouses as joint tenants with a right of survivorship. Noone v. Noone, 127 So. 3d 193, 2013 Miss. LEXIS 647 (Miss. 2013).

CHAPTER 5.

JOINT AND SEVERAL DEBTORS

Sec.

85-5-7. Limitation of joint and several liability for damages caused by two or more persons; contribution between joint tortfeasors; determination of percentage of fault; liability of medical defendants for economic and noneconomic damages.

§ 85-5-7. Limitation of joint and several liability for damages caused by two or more persons; contribution between joint tortfeasors; determination of percentage of fault; liability of medical defendants for economic and noneconomic damages.

(1) As used in this section, "fault" means an act or omission of a person which is a proximate cause of injury or death to another person or persons, damages to property, tangible or intangible, or economic injury, including, but not limited to, negligence, malpractice, strict liability, absolute liability or failure to warn. Except as otherwise provided in this subsection (1), "fault" shall not include any tort which results from an act or omission committed with a specific wrongful intent. For any premises-liability action, as defined under Section 11-1-66.1(7), alleging injury as a result of the willful, wanton or intentional tortious conduct of a third party on commercial or other real property in the State of Mississippi, "fault" shall include any tort which results from an act or omission committed with a specific wrongful intent.

(2) Except as otherwise provided in subsection (4) of this section, in any civil action based on fault, the liability for damages caused by two (2) or more persons shall be several only, and not joint and several and a joint tortfeasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault. In assessing percentages of fault an employer and the employer's employee or a principal and the principal's agent shall be considered as one (1) defendant when the liability of such employer or principal has been caused by the wrongful or negligent act or omission of the employee or agent.

(3) Nothing in this section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly noted herein.

(4) Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.

(5) In actions involving joint tortfeasors, the trier of fact shall determine the percentage of fault for each party alleged to be at fault without regard to whether the joint tortfeasor is immune from damages. Fault allocated under this subsection to an immune tortfeasor or a tortfeasor whose liability is limited by law shall not be reallocated to any other tortfeasor.

(6) Nothing in this section shall be construed to create a cause of action. Nothing in this section shall be construed, in any way, to alter the immunity of any person.

HISTORY: Laws, 1989, ch. 311, § 1; Laws, 2002, 3rd Ex Sess, ch. 2, § 4; Laws, 2002, 3rd Ex Sess, ch. 4, § 3; Laws, 2004, 1st Ex Sess, ch. 1, § 6, eff from and after September 1, 2004, and applicable to all causes of action filed on or after September 1, 2004; Laws, 2019, ch. 435, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (1), added the exception at the beginning of the next-to-last sentence, and added the last sentence.

JUDICIAL DECISIONS

ANALYSIS

I. Under § 85-5-7.

1. In general.
1.5. Applicaton.
3. Instructions to jury.
3.5. Verdict forms.
5. Joint and several damages.
6. Miscellaneous.

I. Under § 85-5-7.

1. In general.

Trial court did not abuse its discretion in excluding any testimony or evidence that other doctors were dismissed from a medical malpractice lawsuit against a doctor because the jury was still allowed to consider any negligence of the other doctors in rendering its decision. Kronfol v. Johnson, 283 So. 3d 1162, 2019 Miss. App. LEXIS 183 (Miss. Ct. App.), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 430 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 459 (Miss. 2019).

1.5. Applicaton.

Trial court properly applied this section and Miss. Code Ann. § 11-1-60(2)(b) to the damages award, finding that the sandblasting company was liable for the damages apportioned to it, which were below the $1 million cap. Miss. Valley Silica Co. v. Barnett, 227 So. 3d 1102, 2016 Miss. App. LEXIS 548 (Miss. Ct. App. 2016), cert. dismissed, — So. 3d —, 2017 Miss. LEXIS 401 (Miss. 2017).

3. Instructions to jury.

Circuit court did not err, pursuant to Miss. Code Ann. §§ 85-5-7(5) and 63-3-805, in refusing an apportionment-of-fault jury instruction because the uncontested evidence presented at trial demonstrated that it was one motorist's negligence that was the sole proximate cause of the accident at an intersection and the injuries sustained by the other motorist and the other motorist's spouse. Dunnam v. Abney, 137 So. 3d 876, 2013 Miss. App. LEXIS 770 (Miss. Ct. App. 2013), cert. denied, 139 So. 3d 74, 2014 Miss. LEXIS 242 (Miss. 2014).

3.5. Verdict forms.

Trial court's failure to use verdict forms proposed by a law firm, which would have permitted an allocation of fault to each party under the comparative fault law, was reversible error in the contractor's action, alleging legal malpractice and related claims, as the evidence would have permitted an allocation of fault to the various parties. Baker & McKenzie, LLP v. Evans, 123 So. 3d 387, 2013 Miss. LEXIS 548 (Miss. 2013).

5. Joint and several damages.

Under Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73(4) (2005), which required proof that a customer was served alcohol when he was visibly intoxicated, a casino was liable for damages from the customer's car accident as the expert of the wrongful-death heirs testified that the driver's blood alcohol content was high enough that trained personnel should have spotted the driver's intoxication. However, under Miss. Code Ann. § 85-5-7(3), which was in effect when the suit was filed, joint and several liability was limited to fifty percent of recoverable damages. Robinson Prop. Group, Ltd. P'ship v. McCalman, 51 So. 3d 946, 2011 Miss. LEXIS 19 (Miss. 2011).

In light of Fontenot and Miss. Code Ann. § 85-5-7(5), Mississippi law supports allocation of fault to immune parties, such as an employer in a non-vessel the Longshore and Harbor Workers' Compensation Act, 33 U.S.C.S. § 901 et seq., claim. Jowers v. Lincoln Elec. Co., 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. 2010).

6. Miscellaneous.

If the jury had found fault with the truck driver, the jury would have been legally required to apportion fault pursuant to the statute, and the fact that the ambulance driver had methamphetamine in his system was certainly a factor the jury could have considered in apportioning fault. Rushing v. Mobile Forest Prods., 282 So. 3d 708, 2019 Miss. App. LEXIS 370 (Miss. Ct. App. 2019).

Trial court erred in granting private contractors summary judgment on the basis that a widow's wrongful death claim would require it to question military decisions because they failed to show that adjudication of a ballistic wall's failure would implicate a political question; the contractors did not show that they would put forward a viable contributory negligence defense because the claim that the wall failed could stand without implicating a decision committed to the military's discretion. Ghane v. Mid-South Inst. of Self Def. Shooting, Inc., 137 So. 3d 212, 2014 Miss. LEXIS 32 (Miss.), cert. denied, 574 U.S. 821, 135 S. Ct. 108, 190 L. Ed. 2d 41, 2014 U.S. LEXIS 5713 (U.S. 2014).

Chancellor erred by imposing joint and several liability on a city, lake owners, and a homeowners association for damages to a homewowner's property caused by the failure of a culvert system, as she did not find that they had colluded to commit a tortious act. Borne v. Estate of T. L. Carraway, 118 So. 3d 571, 2013 Miss. LEXIS 373 (Miss. 2013).

Where plaintiffs sued defendants for the wrongful removal of timber from a tract of land they alleged defendants held in trust for plaintiffs' benefit, the chancellor erred by failing to consider the percentage of fault of the settling defendants or nonparties, as required by Miss. Code Ann. § 85-5-7(5). Smiley v. Yllander, 105 So. 3d 1171, 2012 Miss. App. LEXIS 807 (Miss. Ct. App. 2012).

Grant of summary judgment in favor of the other driver in the passenger's negligence action for injuries that she received in a car accident was inappropriate because an oral surgeon's testimony was admissible; he testified that his opinion was based on his knowledge, skill, experience, training, and education as an orthopedic surgeon and his testimony was sufficient to establish the element of proximate cause and was admissible for the jury to consider in the apportionment of damages. The other driver, as the driver of the second car to hit the vehicle in which the passenger was riding, was responsible only for the amount of the passenger's damages that were based on his fault allocated by the jury in accord with Miss. Code Ann. § 85-5-7. Lopez v. McClellan, 2010 Miss. App. LEXIS 214 (Miss. Ct. App. Apr. 27, 2010).

RESEARCH REFERENCES

ALR.

Construction and Application of Longshore and Harbor Workers' Compensation Act (LHWCA) – Supreme Court Cases. 72 A.L.R. Fed. 2d 1.

CHAPTER 7.

LIENS

Article 7. Owner's Lien for Rent on Personal Property in Self-Storage Facility. 85-7-121

Article 9.	Water, Oil and Gas Wells.	85-7-131
Article 11.	Suits on Performance Bonds.	85-7-181
Article 15.	Towing and Storage of Motor Vehicles.	85-7-251
Article 19.	Qualifying Providers of Burn Care Lien for Causes of Action.	85-7-301
Article 21.	Special Liens on Real Estate or Other Property.	85-7-401
Article 23.	Commercial Real Estate Broker Lien Act.	85-7-501

ARTICLE 1.

CROPS, ADVANCES, LUMBER, TIMBER, FOALS, CALVES AND WATER CRAFT.

SUITS TO ENFORCE LIENS ON CROPS, ADVANCES, LUMBER, TIMBER, FOALS, CALVES AND WATER CRAFT

§ 85-7-31. Commencement of suit.

JUDICIAL DECISIONS

1. Persons entitled to enforce lien.

In a case in which the owner of two multimillion-dollar yachts under construction challenged a lien the unpaid paint supplier established and enforced on the yachts under the Water Craft Seizure Act, summary judgment was properly granted in favor of the owner because privity did not exist between the owner and the paint supplier; the specification of the brand of paint and the painter supplier in the contract between the owner and the independent contractor did not establish privity between the owner and the paint supplier; and the amendment to the master service agreement did not operate retroactively to create privity between the owner and the paint supplier sufficient to create a lien in the paint supplier's favor. Trinity Yachts, LLC v. Mike & Jerry's Paint & Supply (In re Lien), 152 So. 3d 286, 2014 Miss. LEXIS 602 (Miss. 2014).

ARTICLE 5.

MECHANICS AND STABLEKEEPERS.

§ 85-7-101. Articles constructed, manufactured or repaired; lien for labor and materials.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
7. Actions to enforce liens.

1. In general.

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

7. Actions to enforce liens.

Repair company was not entitled to summary judgment on its mechanic's lien claim under Miss. Code Ann. § 85-7-101, for the labor and material to repair an excavator, because there were genuine issues of material facts in dispute, as the reasonableness or necessity of the repairs was not addressed. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

§ 85-7-107. Lien on motor vehicle for labor and materials used in constructing, manufacturing or repairing vehicle; notice to legal owner and holder of any lien; judgment on lien; redemption; sale of vehicle.

JUDICIAL DECISIONS

2. Construction with other law.

Defendants were properly convicted of armed robbery (Miss. Code Ann. § 97-3-79) for taking a car from the victim's repair shop at gunpoint; although one defendant had legal title to the car, the victim had the right of possession of the car through his mechanic's lien under Miss. Code Ann. § 85-7-107. Veazy v. State, 113 So. 3d 1226, 2013 Miss. LEXIS 72 (Miss. 2013).

ARTICLE 7.

OWNER'S LIEN FOR RENT ON PERSONAL PROPERTY IN SELF-STORAGE FACILITY.

Sec.

85-7-121. Definitions.
85-7-123. Owner's lien for rent on personal property in self-storage facility; denial of entry by owner to occupant in default; late fees; election by occupant to receive notice by electronic mail.
85-7-125. Enforcement of owner's lien.
85-7-127. Satisfaction of lien; sale of property.

§ 85-7-121. Definitions.

As used in Sections 85-7-121 through 85-7-129, the following terms shall have the meaning ascribed to them herein, unless the context clearly requires otherwise:

(a) "Default" means the failure timely to perform any obligation or duty set forth in Sections 85-7-121 through 85-7-129 or the rental agreement;

(b) "Electronic mail" means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two (2) or more computers or electronic terminals and includes electronic messages that are transmitted within or between computer networks;

(c) "Last known address" means the postal address or electronic mail provided by the occupant in the latest rental agreement or the postal address

or electronic mail provided by the occupant in a subsequent written notice of a change of address;

(d) "Late fee" means any fee or charge assessed for an occupant's failure to pay rent when due. Late fee does not include interest on a debt; expenses incurred in the collection of unpaid rent; expenses necessary for preservation of personal property or expenses reasonably incurred in its sale or other disposition pursuant to Sections 85-7-121 through 85-7-129; or costs associated with the enforcement of any other remedy provided by law or contract;

(e) "Leased space" means the individual storage space at the self-storage facility which is leased or rented to an occupant pursuant to a rental agreement;

(f) "Occupant" means a person, his sublessee, successor or assign entitled to the use of a leased space at a self-storage facility under a rental agreement to the exclusion of others;

(g) "Owner" means the owner, operator, lessor or sublessor of a self-storage facility, an agent or any person authorized to manage the facility or to receive rent from an occupant under a rental agreement. The term "owner" shall not be construed to mean a warehouseman unless the owner issues a warehouse receipt, bill of lading or other document of title for the personal property stored;

(h) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, watercraft, motor vehicles and household items;

(i) "Rental agreement" means any written agreement or lease that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of leased space at a self-storage facility;

(j) "Sale" means a public or private sale that is conducted at the self-storage facility, another suitable location selected by the owner, or on a publicly accessible website that conducts lien sales or personal property sales. The personal property at a sale may be offered as a unit or in parcels.

(k) "Self-storage facility" means any real property used for the purpose of renting or leasing individual storage space to occupants who are to have access to such space for the purpose of occupants themselves storing and removing personal property on "self-service basis"; provided, however, that an occupant may not use a leased space for residential purposes;

(*l*) "Verified mail" means any method of mailing offered by the United States Postal Service or private delivery service that provides evidence of the mailing.

HISTORY: Laws, 1988, ch. 595, § 1, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (b), (d), (j) and (*l*), and redesignated former (b) as (c), former (c) through (g) as (e) through (i), and former (h) as (k); in (a), substituted "or the rental agreement" for "and the rental agreement"; in (c), inserted "postal" and "or electronic mail" both times they appear; in (i), inserted "leased space at"; and made minor stylistic changes.

§ 85-7-123. Owner's lien for rent on personal property in self-storage facility; denial of entry by owner to occupant in default; late fees; election by occupant to receive notice by electronic mail.

(1) The owner has a lien upon all personal property located at a self-storage facility for rent, late fees, labor or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to Sections 85-7-121 through 85-7-129. The lien provided for in this section is superior to any other lien or security interest except those which are perfected and recorded in Mississippi prior to the date of default under the rental agreement and except any tax lien as otherwise provided by law. The lien attaches as of the date the personal property is placed in the leased space and the rental agreement shall contain a statement in bold type notifying the occupant of the existence of the lien and that the property stored in the leased space may be sold to satisfy the lien if the occupant is in default. If the rental agreement specifies a limit on the value of personal property that the occupant may store in the leased space, the limit shall be deemed to be the maximum value of the personal property in the leased space of the occupant.

(2) If the occupant is in default, the owner may deny the occupant access to the leased space at the self-storage facility.

(3) The rental agreement may provide for a reasonable late fee for failure of the occupant to timely make payments for the leased space when due. A monthly late fee of no more than Twenty Dollars ($20.00) or twenty percent (20%) of the monthly rental amount, whichever is greater, shall be considered reasonable and is not a penalty.

(4) If the owner offers notice by electronic mail, the occupant may elect to receive notice by electronic mail only by indicating the election in the rental agreement.

HISTORY: Laws, 1988, ch. 595, § 2, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment designated the formerly undesignated paragraph as (1) and therein inserted "late fees" in the first sentence and added the last sentence; and added (2) through (4).

§ 85-7-125. Enforcement of owner's lien.

The enforcement of the owner's lien against an occupant who is in default shall be in accordance with the following:

(a) No enforcement action shall be taken by the owner, other than denial of access, as provided for in the rental agreement until the occupant has been in default continuously for a period of fourteen (14) days.

(b) During the default period the occupant shall be notified in writing. The notice shall be delivered in person or sent by verified or electronic mail to the last known address of the occupant. Notices shall be deemed delivered

when deposited in the United States mail, with a private delivery service with postage paid or when an electronic message is sent to the last known address provided by the occupant. If the owner receives an automated message that the electronic mail cannot be delivered, the owner shall deliver the notice in person or send the notice by verified mail. The notice shall include an itemized statement of the owner's claim showing the sum due at the time of the notice, the date when the sum became due and any other sums that shall accrue. The notice shall also include a demand for payment of the sum due within a specified time not less than fourteen (14) days after the date of the notice, a statement that the contents of the occupant's lease space are subject to the owner's lien, the name, street address and telephone number of the owner, or his designated agent, whom the occupant may contact to respond to the notice, a conspicuous statement that unless the claim is paid within the time stated, the personal property will be advertised for public or private sale or will be otherwise disposed of at a specified time and place.

(c) After the expiration of the time given in the owner's notice, the owner shall publish advertisement of the sale to the highest bidder in any commercially reasonable manner. The manner of advertisement is deemed commercially reasonable if it is likely to attract at least three (3) independent bidders to attend or view the sale in person or online at the time and place advertised. The notice shall include the address of the self-storage facility where the personal property is located, and the name of the occupant, and the time, place and manner of the sale.

(d) A sale to the highest bidder shall take place not sooner than fifteen (15) days after the publication.

(e) If no one purchases the property at the sale and if the owner has complied with the foregoing procedures, the owner may otherwise dispose of the property.

HISTORY: Laws, 1988, ch. 595, § 3, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (b), substituted "sent by verified or electronic mail" for "sent by United States certified mail, return receipt requested" in the first sentence, rewrote the second sentence, which read: "Notices shall be deemed delivered when deposited in the United States mail with postage paid," and added the third sentence; in (c), rewrote the first sentence, which read: "After the expiration of the time given in the owner's notice, the owner shall publish, in legal notices, advertisement of the sale to the highest bidder in a newspaper of general circulation where the self-storage facility is located," and added the second sentence; in (d), deleted the last sentence, which read: "If there is no newspaper of general circulation in the county in which the self-storage facility is located, the advertisement shall be posted at least ten (10) days before the date of the sale and in not less than six (6) conspicuous places in the neighborhood where the self-storage facility is located"; and in (e), deleted the last sentence, which read: "Any sale or disposition of the personal property shall be held at the self-storage facility or at the nearest suitable place to the place the personal property is held or stored."

§ 85-7-127. Satisfaction of lien; sale of property.

(1) Before any sale or other disposition of personal property pursuant to Sections 85-7-121 through 85-7-129, the occupant may pay the amount necessary to satisfy the owner's lien and the reasonable expenses incurred under Sections 85-7-121 through 85-7-129, and thereby redeem the personal property. Upon the payment and satisfaction of the amount necessary to satisfy the lien and the reasonable expenses incurred under Sections 85-7-121 through 85-7-129, the owner shall return the personal property and thereafter the owner shall have no liability to any person with respect to such personal property. Unless the rental agreement specifically provides otherwise and until a sale under Sections 85-7-121 through 85-7-129, the exclusive care, custody and control of all personal property stored in the leased space remains vested in the occupant.

(2) The owner may buy at any sale of personal property to enforce the owner's lien.

(3) A purchaser in good faith of the personal property sold to satisfy the owner's lien takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the owner with the requirements of this section.

(4) In the event of a sale under Sections 85-7-121 through 85-7-129, the owner may satisfy his lien from the proceeds of the sale but shall hold the balance, if any, for delivery on demand to the occupant. In no event shall the owner's liability exceed the proceeds of the sale. If the occupant does not claim the balance of the proceeds within one (1) year of the date of the sale, such balance shall be deemed to be abandoned and the owner shall pay such balance to the Treasurer of the State of Mississippi, in accordance with the Uniform Disposition of Unclaimed Property Act.

(5)(a) If the personal property subject to the owner's lien is a vehicle, watercraft, or trailer and rent or other charges remain unpaid for sixty (60) days, the owner may have the vehicle, watercraft, or trailer towed from the self-storage facility. This removal shall not release the owner's lien. The owner shall not be liable for any damages to the vehicle, watercraft, or trailer once the tower takes possession of the property.

(b) Not less than ten days before having personal property towed pursuant to this section, an owner shall notify the occupant by regular mail or electronic mail at the occupant's last known address and shall include the name, address, and telephone number of the tower and the owner or his designated agent.

(6) Nothing in this article shall be construed as in any manner impairing or affecting the right of parties to create additional rights, duties, and obligations in and by virtue of a rental agreement. In addition to the rights and remedies set forth in this article, the owner has the same rights of and remedies available to a creditor or landlord.

HISTORY: Laws, 1988, ch. 595, § 4, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1), inserted "and the reasonable expenses incurred under Sections 85-7-121 through 85-7-129" in the first sentence, and in the last sentence, deleted "lien" preceding "sale under" and "self-storage" preceding "space remains vested"; in (4), substituted "in accordance with the Uniform Disposition of Unclaimed Property Act" for "who shall deposit such funds into the General Fund"; and added (5) and (6).

ARTICLE 9.

WATER, OIL AND GAS WELLS.

Sec.

85-7-131. Liens on water, oil or gas wells; effect as to purchasers, etc., without notice.
85-7-133. Chancery clerk to keep record of liens.
85-7-135 through 85-7-139. Repealed.
85-7-141. Commencement of suit to enforce lien.
85-7-143. Parties to the suit.
85-7-145. Summons of defendants.
85-7-147. Defenses and counterclaims.
85-7-149 and 85-7-151. Repealed.

§ 85-7-131. Liens on water, oil or gas wells; effect as to purchasers, etc., without notice.

Every water well or oil and gas well, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, shall be liable for services or construction and the debt shall be a lien thereon. As to oil and gas wells, the operator thereof shall have a lien upon the interest of each nonoperator owner of an interest in the mineral leasehold estate for the nonoperator's proportionate part of the labor, material and services rendered by the operator or for the operator's account on behalf of each nonoperator in the drilling, completion, recompletion, reworking or other operations of the oil and gas well. If the structure is a water well, the lien shall extend only to all pumps, pipes, equipment therein and all water well appurtenances. If the structure is an oil or gas well, the lien shall extend to the nonoperator's interest in the mineral estate and the fixtures and equipment in the producing unit assigned to the well by the State Oil and Gas Board. The lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of commencing suit to enforce the lien, or from the time of filing the contract under which the lien arose, or notice thereof, in the office of the clerk of the chancery court, as hereinafter stated; delivery of material to the job is prima facie evidence of its use therein, and use of water from a water well is prima facie evidence of acceptability of the well. In the case of oil and gas wells, the lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing notice of the lien as provided by Section 85-7-133.

HISTORY: Codes, Hutchinson's 1848, ch. 45, art. 6 (1); 1857, ch. 39, art. 1; 1871, § 1603; 1880, § 1378; 1892, § 2698; 1906, § 3058; Hemingway's 1917, § 2418; 1930,

§ 2258; 1942, § 356; Laws, 1926, ch. 150; Laws, 1928, ch. 137; Laws, 1962, ch. 488, §§ 1, 2; Laws, 1964, ch. 291; Laws, 1979, ch. 379; Laws, 2010, ch. 372, § 1; Laws, 2014, ch. 487, § 18, eff from and after passage (approved Apr. 11, 2014).

Amendment Notes — The 2014 amendment rewrote the section, which read: "Every house, building, water well or structure of any kind, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, railroad embankment, erected, constructed, altered or repaired, and every subdivision of property or subdivided property which required services, designs or construction in designing or laying out of streets or subdividing or construction of streets, sewerage, water or other utilities to be furnished by the said subdivision or by the various owners or holders or creators of said subdivision or subdivided property or individual lot or lots in connection therewith, whether inside of a municipality or outside thereof, shall be liable for the debt contracted and owing, for labor done or materials furnished or equipment rented or leased, or architectural engineers' and surveyors' or contractors' service rendered about the erection, construction, alteration or repairs thereof; and debt for such services or construction shall be a lien thereon. The architects, engineers, surveyors, laborers, rental or lease equipment suppliers and materialmen and/or contractors who rendered services and constructed the improvements shall have a lien therefor. Further, as to oil and gas wells, the operator thereof shall have such a lien upon the interest of each nonoperator owner of an interest in the mineral leasehold estate for such nonoperator's proportionate part of such labor, material and services rendered by the operator or for the operator's account in behalf of each nonoperator in the drilling, completion, recompletion, reworking or other operations of such oil and gas well. If such house, building, structure, or fixture be in a city, town or village, the lien shall extend to and cover the entire lot of land on which it stands and the entire curtilage thereto belonging; or, if not in a city, town or village, the lien shall extend to and cover one (1) acre of land on which the same may stand, if there be so much, to be selected by the holder of the lien. If the structure be a water well, the lien shall extend only to all pumps, pipes, equipment therein and all water well appurtenances. If the structure be an oil or gas well, the lien shall extend to the nonoperator's interest in the mineral estate and the fixtures and equipment in the producing unit assigned such well by the State Oil and Gas Board. If the structure be a railroad or railroad embankment, the lien shall extend to and cover the entire roadbed and right-of-way, depots and other buildings used or connected therewith. If the services of the architect, surveyor, engineer, laborers, materialmen, rental or lease equipment suppliers or of the contractors shall be upon the whole subdivision, the lien shall extend to and cover the entire subdivision; but if a part only of the land is subdivided and laborers', materialmen's, rental or lease equipment suppliers', architects', surveyors' or engineers' services are required and contractors are employed, then the lien shall extend to only that portion of said property upon which the services were required or upon which or in connection with which the work was done or the materials or rental or lease equipment were furnished. Such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of commencing suit to enforce the lien, or from the time of filing the contract under which the lien arose, or notice thereof, in the office of the clerk of the chancery court, as hereinafter stated; delivery of material to the job is prima facie evidence of its use therein, and use of water from a water well is prima facie evidence of acceptability of the well. In the case of oil and gas wells, such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing notice of such lien as provided by Section 85-7-133."

JUDICIAL DECISIONS

ANALYSIS

I. Generally.

2. Contract—necessity and sufficiency of.
8. Enforcement of lien.

I. Generally.

2. Contract—necessity and sufficiency of.

Plaintiffs contended and defendant agreed that because defendant failed to have both plaintiffs, as tenants by the entirety, execute the construction contract, the lien did not attach to the property as a means of securing the debt owed only by one plaintiff to defendant, but the other plaintiff's alleged knowledge and consent to work being done on property she owned might amount to authorization, regardless of whether or not she was a signatory to the contract, and summary judgment was inappropriate at this stage. Ward v. McCammon (In re Ward), 2014 Bankr. LEXIS 1200 (Bankr. N.D. Miss. Mar. 28, 2014).

8. Enforcement of lien.

Subcontractor's claim under the statute failed as a matter of law because recovery required the subcontractor to prove it was in a contractual relationship with a hotel owner or the general contractor, something it did not prove and could not prove based on its lack of a certificate of responsibility voiding any contract. Ground Control, LLC v. Capsco Indus., 214 So. 3d 232, 2017 Miss. LEXIS 93 (Miss. 2017).

§ 85-7-133. Chancery clerk to keep record of liens.

Each of the several chancery clerks of this state shall provide in his office, as a part of the land records of his county, a record entitled "Notice of Liens" wherein notices under Section 85-7-131 shall be filed and recorded, and the liens shall not take effect until some notation of the lien is filed and recorded in the record showing a description of the property involved, the name of the lienor or lienors, the date of filing, if and where suit is filed, and if and where contract is filed or recorded.

HISTORY: Codes, Hutchinson's 1848, ch. 45, art. 6 (1); 1857, ch. 39, art. 1; 1871, § 1603; 1880, § 1378; 1892, § 2698; 1906, § 3058; Hemingway's 1917, § 2418; 1930, § 2258; 1942, § 356; Laws, 1926, ch. 150; Laws, 1928, ch. 137; Laws, 1962, ch. 488, §§ 1, 2; Laws, 1964, ch. 291; Laws, 1994, ch. 521, § 39; Laws, 2014, ch. 487, § 19, eff from and after passage (approved Apr. 11, 2014).

Amendment Notes — The 2014 amendment substituted "Notice of Liens" for "Notice of Construction Liens" and "the liens shall not take effect until some notation of the lien is filed and recorded in the record" for "such liens, as provided hereunder, shall not take effect unless and until some notation thereof shall be filed and recorded in said record."

§§ 85-7-135 through 85-7-139. Repealed.

Repealed by Laws, 2014, ch. 487, § 24, effective from and after passage April 11, 2014.

§ 85-7-135. [Codes, 1857, ch. 39, art. 2; 1871, § 1604; 1880, § 1379; 1892, § 2699; 1906, § 3059; Hemingway's 1917, § 2419; 1930, § 2259; 1942, § 357; Laws, 1926, ch. 150; Laws, 2010, ch. 372, § 2, eff from and after July 1, 2010.]

§ 85-7-137. [Codes, 1857, ch. 39, art. 3; 1871, § 1605; 1880, § 1380; 1892, § 2700; 1906, § 3060; Hemingway's 1917, § 2420; 1930, § 2260; 1942, § 358.]

§ 85-7-139. [Codes, 1857, ch. 39, art. 5; 1871, § 1607; 1880, § 1382; 1892, § 2701; 1906, § 3061; Hemingway's 1917, § 2421; 1930, § 2261; 1942, § 359.]

Editor's Notes — Former § 85-7-135 provided that liens under § 85-7-131 (as it appeared prior to the 2014 amendment) exist only in favor of the contractor or an employee.

Former § 85-7-137 provided a lien for construction, alteration or repair of any house or building that was done at the instance of a person not the owner of the property attached only to the house or building and the estate of the person who is not the owner of the property. For present similar provisions, see § 85-7-411.

Former § 85-7-139 provided that a written contract for the construction or repair of a house or building could be recorded.

§ 85-7-141. Commencement of suit to enforce lien.

Any person entitled to and desiring to have the benefit of a lien under Section 85-7-131 shall commence his suit in the circuit or county court of the county in which the property or some part thereof is situated, if the principal of his demand exceeds Two Hundred Dollars ($200.00), within twelve (12) months next after the time when the money due and claimed by the suit became due and payable following the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action, and not after; and the suit shall be commenced by petition, describing with reasonable certainty the property upon which the lien is averred to exist, and setting out the nature of the contract and indebtedness, and the amount thereof; and the plaintiff shall file therewith in all cases, except where the whole work or materials, or both, were furnished in pursuance of a written contract for an aggregate price, a bill of particulars exhibiting the amount and kind of labor performed, and of materials furnished, and the prices at which and times when the same were performed and furnished; and such suits shall be docketed and conducted as other suits in that court, and may be tried at the first term.

HISTORY: Codes, Hutchinson's 1848, ch. 45, art. 7 (3); 1857, ch. 39, art. 6; 1871, § 1609; 1880, § 1384; 1892, § 2702; 1906, § 3062; Hemingway's 1917, § 2422; 1930, § 2262; 1942, § 360; Laws, 1904, ch. 152; Laws, 2011, ch. 457, § 1; Laws, 2014, ch. 487, § 20, eff from and after passage (approved Apr. 11, 2014).

Amendment Notes — The 2014 amendment substituted "a" for "such" and inserted "under Section 85-7-131" preceding "shall commence his suit" near the beginning; and substituted "that" for "said" near the end.

JUDICIAL DECISIONS

7. Limitations.

Dismissal of a suit seeking to enforce a construction lien was proper as: (1) the original complaint (OC) did not name the real party in interest under Miss. R. Civ. P. 17(a), the current owner (CO) of the building; (2) the prior owner had conveyed the property before the OC was filed; (3) the amended complaint (AC) was time-barred as it was not served on the CO until after the Miss. Code Ann. § 85-7-141 limitations period expired; (4) due to the lack of timely service under Miss. R. Civ. P. 4(h), the AC did not relate back to the

OC's filing under Miss. R. Civ. P. 15(c); and (5) the contractor did not show good cause for the delayed service. Welch Roofing & Constr., Inc. v. Farina, 99 So. 3d 274, 2012 Miss. App. LEXIS 639 (Miss. Ct. App. 2012).

§ 85-7-143. Parties to the suit.

All persons having an interest in the controversy, and all persons claiming liens on the same property, by virtue of Section 85-7-131, shall be made parties to the suit; and should any necessary or proper party be omitted, he may be brought in by amendment, on his own application or that of any other party interested; and claims of several parties having liens on the same property may be joined in the same action.

HISTORY: Codes, 1857, ch. 39, art 7; 1871, § 1610; 1880, § 1385; 1892, § 2703; 1906, § 3063; Hemingway's 1917, § 2423; 1930, § 2263; 1942, § 361; Laws, 2014, ch. 487, § 21, eff from and after passage (approved Apr. 11, 2014).

Amendment Notes — The 2014 amendment substituted "Section 85-7-131" for "this chapter."

§ 85-7-145. Summons of defendants.

In all actions to enforce a lien granted by Section 85-7-131, the defendants shall be summoned, as in other actions at law, to appear and defend the action; and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if the defendant had been duly summoned and made default.

HISTORY: Codes, 1857, ch. 39, art. 8; 1871, § 1611; 1880, § 1386; 1892, § 2704; 1906, § 3064; Hemingway's 1917, § 2424; 1930, § 2264; 1942, § 362; Laws, 2014, ch. 487, § 22, eff from and after passage (approved Apr. 11, 2014).

Amendment Notes — The 2014 amendment added "In all actions to enforce a lien granted by Section 85-7-131" to the beginning and substituted "the" for "such" near the end.

§ 85-7-147. Defenses and counterclaims.

In all actions to enforce a lien granted by Section 85-7-131, the defendants, or any of them, by answer to the petition, may make any defense they may have against the demand of the plaintiff, and also any counterclaim against him touching the subject-matter of the suit. And should any defendant claim to have a lien upon the same property, for materials furnished or labor done thereon, he may present the lien by his answer; and the cause shall be at issue without a replication, and the parties shall be confined at the trial to the cause of action and defense set forth in the pleadings.

HISTORY: Codes, 1857, ch. 39, art. 9; 1871, § 1612; 1880, § 1387; 1892, § 2705;

1906, § 3065; Hemingway's 1917, § 2425; 1930, § 2265; 1942, § 363; Laws, 2014, ch. 487, § 23, eff from and after passage (approved Apr. 11, 2014).

Amendment Notes — The 2014 amendment added "In all actions to enforce a lien granted by Section 85-7-131" to the beginning of the first sentence and substituted "lien" for "same" in the middle of the second sentence.

§§ 85-7-149 and 85-7-151. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-149. [Codes, 1857, ch. 39, art. 10; 1871, § 1613; 1880, § 1388; 1892, § 2706; 1906, § 3066; Hemingway's 1917, § 2426; 1930, § 2266; 1942, § 364.]

§ 85-7-151. [Codes, 1857, ch. 39, art. 11; 1871, § 1614; 1880, § 1389; 1892, § 2707; 1906, § 3067; Hemingway's 1917, § 2427; 1930, § 2267; 1942, § 365; Laws, 1987, ch. 392, § 1, eff from and after July 1, 1987.]

Editor's Notes — Former § 85-7-149 related to jury trial for actions to enforce liens and the applicability of rules of evidence and practice.

Former § 85-7-151 related to costs and attorneys' fees.

ARTICLE 11.

SUITS ON PERFORMANCE BONDS.

Sec.
85-7-181 through 85-7-185. Repealed.
85-7-197 through 85-7-201. Repealed.

§§ 85-7-181 through 85-7-185. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-181. [Codes, 1880, § 1381; 1892, § 2714; 1906, § 3074; Hemingway's 1917, § 2434; 1930, § 2274; 1942, § 372; Laws, 1904, ch. 153; Laws, 1918, ch. 128; Laws, 1987, ch. 392, § 2; Laws, 2010, ch. 372, § 3, eff from and after July 1, 2010.]

§ 85-7-183. [Codes, Hemingway's 1921 Supp. § 2434a; 1930, § 2275; 1942, § 373; Laws, 1918, ch. 128.]

§ 85-7-185. [Codes, Hemingway's 1921 Supp. § 2434b; 1930, § 2276; 1942, § 374; Laws, 1918, ch. 128; Laws, 2010, ch. 372, § 4; Laws, 2012, ch. 357, § 1, eff from and after July 1, 2012.]

Editor's Notes — Former § 85-7-181 related to subcontractor's written notice to property owner of amount due subcontractor by contractor and suit.

Former § 85-7-183 prohibited assignments of a contract or proceeds by contractors.

Former § 85-7-185 related to contractor or subcontractor bonds guaranteeing performance of contract and prompt payment of all persons furnishing labor or materials or equipment under the contract.

§§ 85-7-197 through 85-7-201. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-197. [Codes, 1930, § 2282; 1942, § 380; Laws, 1928, ch. 136; Laws, 1984, ch. 319, eff from and after July 1, 1984..]

§ 85-7-199. [Codes, 1930, § 2283; 1942, § 381; Laws, 1928, ch. 136.]

§ 85-7-201. [Codes, 1930, § 2284; 1942, § 382; Laws, 1928, ch. 136.]

Editor's Notes — Former § 85-7-197 provided that liens may be recorded in lis pendens record.

Former § 85-7-199 related to the entry of satisfaction when liens are paid or extinguished.

Former § 85-7-201 related to penalties for filing a false notice and action to expunge.

ARTICLE 15.

TOWING AND STORAGE OF MOTOR VEHICLES.

Sec.

85-7-251. Sale of motor vehicle for towing and storage cost; notice requirement.

§ 85-7-251. Sale of motor vehicle for towing and storage cost; notice requirement.

(1) The owner of a motor vehicle that has been towed at his request or at the direction of a law enforcement officer, or towed upon request of a real property owner upon whose property a vehicle has been left without permission of the real property owner, shall be liable for the reasonable price of towing and storage of such vehicle; and the towing company to whom the price of such labor and storage costs may be due shall have the right to retain possession of such motor vehicle until the price is paid.

(2) Within twenty-four (24) hours, the towing company shall report to the local law enforcement agency having jurisdiction any vehicle that has been towed unless the vehicle was towed at the request of the owner of the vehicle. If the owner of a towed vehicle has not contacted the towing company within five (5) business days of the initial tow, the towing company shall obtain from the appropriate authority the names and addresses of any owner and lienholder. If the information from the appropriate authority fails to disclose the owner or lienholder, a good faith effort shall be made by the towing company to locate ownership, including a check for tag information, inspection sticker, or any papers in the vehicle that may indicate ownership. Upon location of the owner and lienholder, the towing company shall notify them by registered mail of the amount due for towing, postmarked no later than the tenth day following the initial tow. If such amount shall not be paid within thirty (30) days from the initial tow, the towing company to whom such charges are payable shall notify by certified mail any legal owner and holder of any lien, as disclosed by the motor vehicle title records or other investigation, of notice of sale of the

property. If such property has not been redeemed within ten (10) days after the mailing of the certified letter, the towing company may commence sale of the property at public auction. The towing company shall publish for two (2) consecutive weeks a notice of sale in the newspaper having circulation in the county where the vehicle was initially towed. The proceeds of the sale of such property in excess of the amount needed to pay the towing, reasonable storage and necessary expenses of the procedures required by this section shall be held by the towing company for a period of six (6) months, and, if not reclaimed by the owner thereof within such time, shall become the property of the county and be paid to the chancery clerk of the county in which the sale was held to be deposited into the county general fund, subject, however, to any rights of the recorded lienholder.

(3) The failure to make a good faith effort to comply with the requirements of this section shall preclude the imposition of any storage charges or towing charges against the towed vehicle.

(4) Every towing company shall maintain accurate records for a period of three (3) years, which records shall identify the vehicles it has towed and stored and all procedures that it has taken to comply with the provisions of this chapter.

HISTORY: Laws, 1995, ch. 578, § 1, eff from and after July 1, 1995; Laws, 2020, ch. 462, § 1, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), deleted "for more than five (5) days" following "left without permission of the real property owner."

JUDICIAL DECISIONS

ANALYSIS

0.5. In general.
1. Construction with other law.

0.5. In general.

Because issues regarding the possessory rights of the parties remained unresolved, remand for a new trial on the merits was warranted to determine which party had a superior possessory right, under Miss. Code Ann. §§ 11-37-101 and 85-7-251, to vehicles which a towing company towed from an auto repairman's leased premises at the landlord's direction. Crowell v. Butts, 153 So. 3d 719, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. 2013), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 395 (Miss. 2014), aff'd in part and rev'd in part, 153 So. 3d 684, 2014 Miss. LEXIS 530 (Miss. 2014).

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

Summary judgment award for a lien against an excavator for storage costs was inappropriate because there was nothing in the stipulation before the county court about storage costs. The affidavits and materials filed in support of the motion for summary judgment discussed storage costs, but did not satisfy the statutory requirements of Miss. Code Ann. § 85-7-251. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013), cert. denied, 125

So. 3d 658, 2013 Miss. LEXIS 587 (Miss. 2013).

1. Construction with other law.

When defendant faced charges arising from defendant's operation of defendant's boat, and the boat was sold, Miss. Code Ann. §§ 99-49-1(4) did not entitle defendant to dismissal because the statute did not apply, as (1) the boat was never moved from a marina, and (2) the State was not notified the boat was being sold, since Miss. Code Ann. §§ 85-7-251 only required notice to the boat's registered owner. Hardy v. State, 137 So. 3d 289, 2014 Miss. LEXIS 227 (Miss. 2014).

ARTICLE 19.

QUALIFYING PROVIDERS OF BURN CARE LIEN FOR CAUSES OF ACTION.

Sec.

85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care.
85-7-303. Filing of verified statement; contents; notice.
85-7-305. Duties of chancery clerk; lien book.
85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment.
85-7-309. Applicability.
85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital.
85-7-313. No independent right of action to determine liability for injuries.
85-7-315. False affidavit required by Section 85-7-307 as perjury.
85-7-317. Repealed.

§ 85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care.

(1) Except where the context otherwise requires in subsection (2) of this section, as used in Sections 85-7-301 through 85-7-315, the term:

(a) "Qualifying hospital" means any hospital designated as a burn center by the State Department of Health.

(b) "Qualifying practice" means any physician practice that provides care, treatment or services to a patient who has been admitted to a qualifying hospital.

(c) "Care, treatment or services" means burn care or burn-related treatment, or services furnished by a qualifying hospital or qualifying practice.

(d) "Uncompensated traumatic burn care" means any portion of care, treatment or services rendered by a qualifying hospital or qualifying practice with respect to a patient whose burn care, treatment or services arose out of a single accident or occurrence for which the qualifying hospital or qualifying practice did not receive payment.

(2) Any person, firm, authority or corporation operating a qualifying hospital or qualifying practice providing traumatic burn care in this state shall have a lien for the reasonable charges for care, treatment or services of an

injured person for uncompensated traumatic burn care, which lien shall be only upon any and all causes of action accruing to the person to whom the care was furnished or to the legal representative of the person on account of injuries that gave rise to the causes of action and that necessitated the care, treatment or services, subject and subordinate, however, to any attorney's lien or fees. The lien provided for in this subsection is only a lien against those causes of action and shall not be a lien against the injured person, the legal representative, or any other property or assets of those persons and shall not be evidence of the person's failure to pay a debt. This subsection shall not be construed to interfere with the exemption from Sections 85-7-301 through 85-7-315 provided by Section 85-7-309, nor shall this subsection prohibit an injured person or his legal representative from negotiating with a qualifying hospital or practice.

HISTORY: Laws, 2013, ch. 512, § 1; reenacted without change, Laws, 2016, ch. 394, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-303. Filing of verified statement; contents; notice.

(1) In order to perfect the lien provided for in Section 85-7-301, the operator of the qualifying hospital or qualifying practice:

(a) Shall, not less than fifteen (15) days before the date of filing the statement required under paragraph (b) of this subsection, provide written notice to the patient and the legal representative of the patient, if applicable, and, to the best of the operator's knowledge, the persons, firms, corporations and their insurers claimed by the injured person or the legal representative of the injured person to be liable for damages arising from the injuries and shall include in the notice a statement that the lien is not a lien against the patient or any other property or assets of the patient and is not evidence of the patient's failure to pay a debt. The notice shall be sent to all those persons and entities by first-class and certified mail or statutory overnight delivery, return receipt requested; and

(b) Shall file in the office of the clerk of the chancery court of the county in which the qualifying hospital or qualifying practice is located and in the county in which the patient resides, if a resident of this state, a verified statement setting forth the name and address of the patient as it appears on the records of the qualifying hospital or qualifying practice; the name and location of the qualifying hospital or qualifying practice, and the name and address of the operator thereof; the dates of admission and discharge of the patient from the qualifying hospital, or with respect to a qualifying practice, the dates of treatment; the amount claimed to be due for the qualifying hospital or qualifying practice; and certification that the amount claimed is for treatment of uncompensated traumatic burn care, which statement must be filed within the following time period:

(i) If the statement is filed by a qualifying hospital, then the statement shall be filed within seventy-five (75) days after the person has been discharged from the facility; or

(ii) If the statement is filed by a qualifying practice, then the statement shall be filed within ninety (90) days after the person first sought treatment from the practice for the injury.

(2) The filing of the claim or lien shall be notice thereof to all persons, firms or corporations liable for the damages, whether or not they received the written notice provided for in this section. The failure to perfect the lien by timely complying with the notice and filing provisions of subsection (1) of this section shall invalidate the lien, except as to any person, firm, or corporation liable for the damages, which receives before the date of any release, covenant not to bring an action, or settlement, actual notice of a notice and filed statement made under subsection (1) of this section, via hand delivery, certified mail, return receipt requested, or statutory overnight delivery with confirmation of receipt.

HISTORY: Laws, 2013, ch. 512, § 2; reenacted without change, Laws, 2016, ch. 394, § 2, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-305. Duties of chancery clerk; lien book.

The clerk of the chancery court shall endorse the date and hour of filing on the statement filed under Section 85-7-303; and, at the expense of the county, the clerk shall provide a lien book with a proper index in which the clerk shall enter the date and hour of the filing; the names and addresses of the qualifying hospital or qualifying practice, the operators thereof, and the patient; and the amount claimed. The information shall be recorded in the name of the patient.

HISTORY: Laws, 2013, ch. 512, § 3; reenacted without change, Laws, 2016, ch. 394, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment.

(1) No release of the cause or causes of action or of any judgment thereon or any covenant not to bring an action thereon shall be valid or effectual against the lien created by Section 85-7-301 unless the holder thereof is given notification of the results of the cause of action or executes a release of the lien; and the injured party (the "claimant") or an assignee of the lien holder may enforce the lien by an action against the person, firm or corporation liable for

the damages or the person, firm or corporation's insurer. If the claimant prevails in the action and if the claimant's balance of the award is insufficient to cover the medical liens, the court may determine pro rata compensation in favor of the claimant. In no case shall the payment towards the liens exceed fifty percent (50%) of the claimant's balance. Any qualifying hospital or qualifying practice that receives payments under the authority of Sections 85-7-301 through 85-7-315 shall release the claimant from any further liens for the cost of hospital care, treatment or services provided for which the lien was placed. The action shall be begun against the person liable for the damages or the person's insurer within one (1) year after the date the liability is finally determined by a settlement, by a release, by a covenant not to bring an action, or by the judgment of a court of competent jurisdiction.

(2) No release or covenant not to bring an action that is made before or after the patient was discharged from the qualifying hospital or qualifying practice shall be effective against the lien perfected in accordance with Section 85-7-303, if the lien is perfected before the date of the release, covenant not to bring an action, or settlement unless notification is given to the qualifying hospital or qualifying practice; however, any person, firm or corporation that consummates a settlement, release or covenant not to bring an action with the person to whom care, treatment or services were furnished and that first procures from the injured party an affidavit as prescribed in subsection (3) of this section shall not be bound or otherwise affected by the lien except as provided in subsection (3) of this section, regardless of when the settlement, release or covenant not to bring an action was consummated.

(3) The affidavit shall affirm:

(a) That all bills incurred for treatment for the injuries for which a settlement is made have been fully paid or resolved; and

(b) The county of residence of the affiant, if a resident of this state; however, the person taking the affidavit shall not be protected thereby where the affidavit alleges the county of the affiant's residence and the lien of the qualifying hospital or qualifying practice is at that time on file in the office of the chancery clerk and is recorded in the name of the patient as it appears in the affidavit.

HISTORY: Laws, 2013, ch. 512, § 4; reenacted without change, Laws, 2016, ch. 394, § 4, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 4, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-309. Applicability.

Sections 85-7-301 through 85-7-315 shall not apply to:

(a) A cause of action filed by a person who received care, treatment or services from a qualifying hospital or a qualifying practice whose medical costs were paid by the Centers for Medicare and Medicaid Services.

(b) Any monies becoming due under the Workers' Compensation Law.

HISTORY: Laws, 2013, ch. 512, § 5; reenacted without change, Laws, 2016, ch. 394, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 5, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital.

No settlement or release entered into or executed before the entry of the injured party into the qualifying hospital shall be affected by or subject to the terms of Sections 85-7-301 through 85-7-315.

HISTORY: Laws, 2013, ch. 512, § 6; reenacted without change, Laws, 2016, ch. 394, § 6, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 6, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-313. No independent right of action to determine liability for injuries.

Sections 85-7-301 through 85-7-315 shall not be construed to give any qualifying hospital or qualifying practice an independent right of action to determine liability for injuries sustained by a person or firm.

HISTORY: Laws, 2013, ch. 512, § 7; reenacted without change, Laws, 2016, ch. 394, § 7, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 7, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-315. False affidavit required by Section 85-7-307 as perjury.

Any person who gives any false affidavit as provided by Section 85-7-307 commits the offense of perjury.

HISTORY: Laws, 2013, ch. 512, § 8; reenacted without change, Laws, 2016, ch. 394, § 8, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 8, eff from and after July 1, 2019.

Amendment Notes — The 2016 amendment reenacted the section without change. The 2019 amendment reenacted the section without change.

§ 85-7-317. Repealed.

Repealed by Laws, 2019, ch. 425, § 9, eff from and after July 1, 2019.

§ 85-7-317. [Laws, 2013, ch. 512, § 9; Laws, 2016, ch. 394, § 9, eff from and after July 1, 2016.]

Editor's Note — Former § 85-7-317 repealed §§ 85-7-301 through 8-7-315, effective July 1, 2019.

ARTICLE 21.

SPECIAL LIENS ON REAL ESTATE OR OTHER PROPERTY.

Sec.

85-7-401. Definitions.
85-7-403. Special lien on real estate or other property for labor, services or materials furnished.
85-7-405. Creation and declaration of lien; requisite statement and notice; payment action; amendment of claim of lien; priority of liens.
85-7-407. Contractors to furnish list of all subcontractors and materialmen upon written request of property owner; information to be provided by persons not having privity of contract with contractor; applicability of section.
85-7-409. Limitation of recovery of subcontractors against single-family residential homeowner.
85-7-411. Attachment of liens to buildings or improvements on leased property.
85-7-413. Dissolution of special liens.
85-7-415. Discharge of lien by filing bond.
85-7-417. Privileges and benefits of partnerships, corporations or associations with respect to special liens on real estate.
85-7-419. Waiver and release of lien or bond claim.
85-7-421. Expiration of claim of lien if payment action not timely filed; filing cancellation of fully satisfied lien.
85-7-423. Shortening the time prescribed in which to file payment action.
85-7-425. Computation of time.
85-7-427. Enforcement of judgments by special writ of execution.
85-7-429. Liability for falsely and knowingly filing claim of lien without just cause.
85-7-431. Payment bond as substitution for subcontractor or materialmen liens.
85-7-432. Private project construction bonds; requirements; right to sue; right of action; persons protected by payment bond.
85-7-433. Forms; interim waiver and release upon payment; waiver and release upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

§ 85-7-401. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(b) "Contractor" means a contractor having privity of contract with the owner or lessee of the real estate.

(c) "Lien action" means a civil action against the owner of improved property to perfect and make permanent the lien created by Section 85-7-403.

(d) "Payment action" means a lawsuit, proof of claim in a bankruptcy case, or a binding arbitration.

(e) "Professional surveyor" has the meaning given in Section 73-13-71.

(f) "Materials" means materials, tools, appliances, machinery, or equipment used in making improvements to the real estate.

(g) "Materialmen" or "materialman" means all persons furnishing the materials, tools, appliances, machinery, or equipment included in the definition of materials to a contractor or to a subcontractor in privity with the contractor.

(h) "Professional engineer" has the meaning given in Section 73-13-3.

(i) "Residential property" means single-family and two-family, three-family, and four-family residential real estate.

(j) "Statutory overnight delivery" means delivery of a document through the United States Postal Service or through a commercial firm that is regularly engaged in the business of document delivery or document and package delivery in which the sender:

(i) Has directed that delivery be not later than the next business day following the day on which the document is received for delivery by the United States Postal Service or the commercial firm; and

(ii) Receives a receipt acknowledging receipt of the document signed by addressee or an agent of the addressee.

(k) "Subcontractor" means subcontractors having privity of contract with the contractor; "subcontractor" also means subcontractors having privity of contract with a subcontractor having privity of contract with the contractor.

(*l*) "Registered architect" has the meaning given in Section 73-1-3.

(m) "Design professional" includes professional surveyors, professional engineers and registered architects.

HISTORY: Laws, 2014, ch. 487, § 1, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-403. Special lien on real estate or other property for labor, services or materials furnished.

(1) The following persons shall each have a special lien on the real estate or other property for which they furnish labor, services or materials:

(a) All contractors, all subcontractors and all materialmen furnishing material for the improvement of real estate;

(b) All registered architects or professional engineers furnishing plans, drawings, designs, or other architectural or engineering services on or with respect to any real estate;

(c) All registered land surveyors performing or furnishing services on or with respect to any real estate.

(2) Each special lien specified in subsection (1) of this section may attach to the real estate of the owner for which the labor, services or materials are

furnished if they are furnished at the instance of the owner, design professional or contractor or a subcontractor having direct privity of contract with a contractor, and shall include the value of work done and labor, services or materials furnished.

(3) Each special lien specified in subsection (1) of this section shall be limited to the amount due and owing the lien claimant under the terms of its express or oral contract, subcontract or purchase order subject to Section 85-7-405(4).

(4) Each special lien specified in subsection (1) of this section shall include interest on the principal amount due in accordance with Section 75-17-1, 75-17-7 or 75-17-19 as applicable by law.

(5) Notwithstanding any other provision of this article, no lien shall exist in favor of any contractor or subcontractor who is not licensed as required by either Section 31-3-1 et seq., or Section 73-59-1 et seq., or who contracts with any contractor or subcontractor who is not licensed as required. Upon request, any contractor or subcontractor is required to provide any owner, contractor, subcontractor or materialman a copy of that person's current license.

HISTORY: Laws, 2014, ch. 487, § 2, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-405. Creation and declaration of lien; requisite statement and notice; payment action; amendment of claim of lien; priority of liens.

(1) To make good a lien created in Section 85-7-403(1), it must be created and declared in accordance with the following provisions, and on failure of any of them the lien shall not be effective or enforceable:

(a) A substantial compliance by the party claiming the lien with the party's contract, subcontract or purchase order for work performed or labor, services or material provided in the building, repairing, or improving of real estate; for architectural services furnished; for registered land surveying or registered professional engineering services furnished or performed; or for materials or machinery furnished;

(b) The filing for record of the claim of lien in the office of the clerk of the chancery court of the county where the property is located within ninety (90) days after the claimant's last work performed, labor, services or materials provided, the furnishing of architectural services, or the furnishing or performing of surveying or engineering services. The lien shall include a statement regarding its expiration pursuant to Section 85-7-421(1) and a notice to the owner of the property on which a claim of lien is filed that the owner has the right to contest the lien; the absence of the statement or notice shall invalidate the lien. The claim shall be in substance as follows:

"A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person (as the case may be) claims a lien in the amount of (specify the amount claimed) on the building, structure, house, factory, mill, machinery, or railroad (as the case may be) and the premises or real estate on which it is erected or built, of C.D. (describing the houses, premises, real estate, or railroad), for satisfaction of a claim which became due on (specify the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the premises) for work performed or labor, services provided (or whatever the claim may be).

THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED BY THE CLAIMANT WITHIN THAT TIME PERIOD.

NOTICE TO OWNER OF PROPERTY: You have the right to contest this claim of lien pursuant to Mississippi law."

No later than two (2) business days after the claim of lien is filed of record, the lien claimant shall send a true and accurate copy of the claim of lien by registered or certified mail or statutory overnight delivery to the owner of the property or, if the owner's address cannot be found, the contractor, as the agent of the owner; if the property owner is an entity on file with the Secretary of State's office, sending a copy of the claim of lien to the entity's address or the registered agent's address shall satisfy this requirement. If the lien claimant is not the contractor, he shall also send a copy of the claim of lien within two (2) business days by registered or certified mail or statutory overnight delivery to the contractor or to the contractor's registered agent.

(c)(i) A payment action for the recovery of the amount of the lien claimant's claim against the party he contracted with shall be commenced in county, circuit or chancery court within one hundred eighty (180) days from the date of filing for record of the lien claimant's claim of lien. A lis pendens notice shall be filed with the commencement of the action with a copy to the owner and contractor;

(ii) The payment action shall be commenced by summons and complaint. The defendants shall be summoned, as in other actions at law, to appear and defend the action; and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if the defendant had been duly summoned and made default;

(iii) Nothing in this paragraph (c) shall prejudice the parties' contractual rights to arbitration, as applicable;

(d)(i) The commencement of a payment action under paragraph (c) is not required if the owner has not made payment to the contractor and the

lien claimant cannot secure a final judgment against the party with whom the lien claimant contracted because:

1. The party has been adjudicated a bankrupt;
2. If an individual, the party is deceased; or
3. Payment is not due to the lien claimant under the applicable contract agreement until after payment is received by the party with whom the lien claimant contracted.

(ii) If paragraph (d) (i) of this section applies, the person or persons furnishing labor, services or materials may enforce the lien directly against the property in a lien action against the owner if it is filed within the required time for filing a payment action, with the judgment rendered in the proceeding to be limited to a judgment in rem against the property improved and to impose no personal liability upon the owner of the property. A lis pendens notice shall be filed with the commencement of this lien action with a copy to the owner and the contractor.

(iii) Nothing in this paragraph (d) shall impact or negate the rights and defenses available pursuant to Section 85-7-413 or 85-7-419.

(e) A claim of lien may be amended at any time to increase or reduce the amount claimed, and the amended claim of lien shall relate back to the date of filing for record of the original claim of lien. An amended claim of lien filed for record pursuant to this subsection shall be sent to the owner of the property in the same manner as required for a claim of lien in subsection (1) (b) of this section and shall be in substance as follows:

"That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded at book (book#), page (page#) in the lien index of (name of county) County is hereby amended by increasing/reducing (cross out one) the amount of the claim of lien to (specify reduced amount claimed). The remaining terms of the original claim of lien are hereby incorporated by reference into this amended claim of lien. This amended claim of lien relates back to the date that the original claim of lien was filed for record."

(2)(a) The liens specified in Section 85-7-403 ("construction liens") shall be inferior to liens for taxes, but construction liens shall be superior in priority to all other liens except as specified in subsection (2) (b) and (c).

(b) Except as provided in subsection (2)(c), a construction lien shall have priority over all other liens, deeds of trust, mortgages or encumbrances filed after the date and time of the filing of the notice of lien in the office of the chancery clerk of the county in which the land is located. All liens, deeds of trust, mortgages and encumbrances filed before the date and time of the filing of the notice of construction lien shall have priority over the construction lien, whether the work secured by the lien was performed before or after the filing of the lien, deed of trust, mortgage or other encumbrance. This priority will extend to amendments or restatements and assignments of the lien, deed of trust, mortgage and other encumbrance. The priorities in this subsection are determined by the date and time of filing and without regard to the actual knowledge of the parties of unrecorded liens. Enforcement of a construction lien shall not affect any prior deeds of trust or other liens, and

a purchaser, in connection with the enforcement of a construction lien, shall take the property subject to any prior liens, deeds of trust, mortgages or encumbrances of which the purchaser has actual or constructive notice on the date of the purchase. Foreclosure of any prior deeds of trust or other liens shall terminate and extinguish the subordinate construction lien or other interest as to the land and the buildings and improvements thereon, whether or not at the time of the foreclosure the construction lien or interest has been perfected in accordance with the provisions of this article, and the subordinate lienholder shall have the rights in any excess proceeds received by the foreclosing lienholder as provided by law.

(c) A deed of trust, mortgage, assignment of leases and rents, fixture filing or other security agreement affecting real property is a construction mortgage to the extent it secures a loan or loans for the purpose of financing the repair or construction of an improvement on the real property, which may include the acquisition cost of the real property. A construction lien is subordinate to a construction mortgage if the construction mortgage is filed in the land records before a notice of a claim of lien is filed pursuant to Section 85-7-405 and the lender, secured party, mortgagee, beneficiary or holder of the construction mortgage obtained either: (i) an affidavit or sworn statement from the owner to the effect that no work has been performed on, or materials delivered to, the real property; or (ii) an affidavit or sworn statement from the contractor, or owner if there is no contractor, as provided in Section 85-7-413(1) (b) regarding payment for work, materials or services provided. A construction mortgage has this priority for all loan advances secured thereby regardless of whether the advances are made before or after the filing of a notice of a construction lien, and this priority will extend to amendments, restatements and refinancings of the construction mortgage.

(3)(a) Following compliance with the requirements of subsection (1) of this section, in any proceeding against the owner to enforce a lien created by Section 85-7-403 against the property, the party having a direct contractual relationship with the lien claimant shall not be a necessary party, but may be made a party. The design professional, contractor or subcontractor, or all of them, may intervene in the proceedings at any time before judgment for the purpose of resisting the establishment of the lien or of asserting against the lien claimant any claim of the contractor or subcontractor growing out of or related to the contract, subcontract or purchase order upon which the asserted lien is based.

(b) Any party to an action against the owner to enforce a lien against the property, by appropriate plea, may put in issue the fact of indebtedness or the existence of the lien, or both, and may interpose any other defense or join any counterclaim applicable to the action; and if the court by its finding, or the jury by their verdict, as the case may be, ascertain that the plaintiff has a lien as claimed, judgment shall be entered for the amount secured thereby, plus interest and costs, against the party liable for the same.

(c) The court, in its discretion, may award reasonable costs, interest and attorney's fees to the prevailing party in an action against the owner to enforce a lien against the property.

(d) All liens arising under Section 85-7-403 shall have an equal priority, and be first paid out of the proceeds of the sale of the property, or money collected from the owner; and if the proceeds and money are insufficient to satisfy the liens in full, the proceeds and money shall be distributed pro rata among the claimants thereof or as otherwise ordered by the court.

(4) In no event shall the aggregate amount of liens created by Section 85-7-403 exceed the contract price as determined by the terms of the contract or other agreement between the owner and contractor for the improvements made or services performed.

(5)(a) If payments have been made in reliance upon either lien waivers issued by lien claimants pursuant to Section 85-7-413(1) (a) or sworn written statements of the contractor pursuant to Section 85-7-413(1) (b), the aggregate amount of liens created by Section 85-7-403 in favor of subcontractors and materialmen who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the contractor at the time the first notice of lien is filed pursuant to this section.

(b) If payments have been made in reliance upon either lien waivers issued by lien claimants pursuant to Section 85-7-413(1) (a) or sworn written statements of the contractor pursuant to Section 85-7-413(1) (b), the aggregate amount of liens created by Section 85-7-403 in favor of design professionals who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the design professional who is in privity of contract with the owner at the time the first notice of lien is filed pursuant to this section.

HISTORY: Laws, 2014, ch. 487, § 3, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

JUDICIAL DECISIONS

1. Interpretation.

Chancellor properly interpreted and applied Miss. Code Ann. § 85-7-405 to deny a casino's petition to expunge a subcontractor's lien where the statute referenced only the date of the lien claimant's last work performed, and the subcontractor had provided labor, service, and/or material required by the contract and at the casino's direction within 90 days of the lien's filing. Land Holdings I, LLC v. GSI Servs., LLC, 265 So. 3d 147, 2019 Miss. LEXIS 25 (Miss. 2019).

§ 85-7-407. Contractors to furnish list of all subcontractors and materialmen upon written request of property owner; information to be provided by persons not having privity of contract with contractor; applicability of section.

(1) Upon the written request of the property owner by registered or certified mail or statutory overnight delivery, the contractor shall furnish to the owner a complete list of all subcontractors and materialmen and upon written request from the contractor, all subcontractors shall provide the same information. If the contractor or subcontractor willfully fails or refuses to furnish the list or to give the information to the owner or contractor within a reasonable time, he shall thereby forfeit his right to a lien under this article. Similarly, if the contractor or subcontractor fails to pay any materialman or subcontractor in direct privity with him in accordance with any contract, subcontract or purchase order specifically requiring him to do so, he shall thereby forfeit his right to a lien under this article.

(2) For any person having a right to a lien pursuant to Section 85-7-403 who does not have privity of contract with the contractor, or, if there is no contractor, with the owner, and is providing labor, services or materials for the improvement of property, within thirty (30) days following the first delivery of labor, services or materials to the property, the person shall give a written notice to the contractor, or, if there is no contractor, to the owner, either by e-mail with a confirmed receipt, registered or certified mail, or statutory overnight delivery setting forth the following:

(a) The name, address, and telephone number of the person providing labor, services or materials;

(b) The name and address of each person at whose instance the labor, services or materials are being furnished;

(c) The name of the project and location of the project to which labor, services or materials are provided; and

(d) A description of the labor, services or materials being provided and, if known, the contract price or anticipated value of the labor, services or materials to be provided.

If the person not in privity of contract with the contractor fails to provide the required notice to the contractor, he shall thereby forfeit his right to a lien under this article.

(3) When a claimant is requested to execute a waiver and release in exchange for or to induce the making of an interim or final payment in accordance with Section 85-7-419(2) or (3), and does so, if payment is made pursuant to the waiver and release and the design professional, contractor or subcontractor, without good cause, in turn willfully fails or refuses to pay the claimant the amount claimed as set forth in the waiver and release, then the design professional, contractor or subcontractor, as the case may be, shall be liable to the claimant in the amount of three (3) times the amount claimed on the face of the waiver and release. Good cause includes, but is not limited to,

any defense available pursuant to the terms of the applicable contract, subcontract or purchase order.

(4) The provisions of this section do not apply to single-family residential construction.

HISTORY: Laws, 2014, ch. 487, § 4, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-409. Limitation of recovery of subcontractors against single-family residential homeowner.

(1) As to single-family residential construction only, payment made by or on behalf of the owner to a contractor or design professional in privity with the owner, for the work of a subcontractor, materialman, professional engineer or professional surveyor, shall be an absolute defense to any claim of lien made by the subcontractor, materialman, professional engineer or professional surveyor, (a) but only to the extent of the payment actually made by or on behalf of the owner to the contractor or design professional in privity with the owner, and (b) only to the extent the owner has not received a pre-lien notice in accordance with subsection (2) of this section before the payment.

(2) As to single-family residential construction only, as a condition precedent of any right to a special lien under Section 85-7-403 in favor of a subcontractor, materialman or design professional not in privity with the owner, the claimant must provide the owner a pre-lien written notice at least ten (10) days before filing a claim of lien under Section 85-7-405, which can be evidenced by any reliable means of delivery.

(3) The claimant's written notice required in subsection (2) shall be in substantially the same form as the Pre-Lien Notice set forth in Section 85-7-433(5).

HISTORY: Laws, 2014, ch. 487, § 5, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-411. Attachment of liens to buildings or improvements on leased property.

(1)(a) When the building or improvement is erected under or by virtue of any contract with a lessee in possession, and the erection thereof is not in violation of the terms or conditions of the lease, the lien shall attach to the building or improvement, and to the unexpired term of the lease, and the holder of the lien shall have the right to avoid a forfeiture of the lease by

paying rent to the lessor, as it becomes due and payable, or by the performance of any other act or duty to which the lessee is bound.

(b) If the lien can be enforced by a sale of the building or improvement, the purchaser may, at his election, (i) become entitled to the possession of the demised premises, and to remain therein for the unexpired term, by paying rent to the lessor, or performing any other act or duty to which the lessee was bound, as if he were the assignee of the lease; or (ii) he may, within sixty (60) days after the sale, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property; and if he elects to take possession and to remain therein until the expiration of the term of the lease, he may, within a reasonable time after the expiration of the term, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property.

(c) If, before a sale, the holder of the lien has made any payments of rent, or other pecuniary compensation to the lessor, which ought to have been paid by the lessee, he shall be reimbursed for the payments from the proceeds of the sale.

(2) When a lien attaches under subsection (1) of this section, the lessor, at any time before a sale of the property, shall have a right to discharge the lien by paying to the holder the amount secured thereby, including costs and all monies he may have paid to the lessor to prevent a forfeiture of the lease, and, after a sale, he shall have the right to prevent the removal of the building or improvement from the premises by paying to the purchaser the value of the building or improvement; and upon the payment, either to the holder of the lien or to the purchaser, the building or improvement shall become the property of the lessor.

(3) Notwithstanding subsections (1) and (2) of this section, unless done by the written consent of the owner, only the building or improvements erected, and then only to the extent that they are detachable from the real property without injury to the real property, as well as the estate of the tenant in the land, shall be subject to the lien.

HISTORY: Laws, 2014, ch. 487, § 6, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

JUDICIAL DECISIONS

ANALYSIS

Under Former Law
12. Liability generally.
13. Contracts by non-owning spouse.
14. Enforcement of lien.

Under Former Law

12. Liability generally.

Statute subjecting to mechanic's lien only house, building, etc., erected, constructed, etc., at instance of one not owner

of land, unless done by owner's written consent, was not invalid as depriving owner of property without due process. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

A contractor had both an equitable and a statutory lien on a house that it built, even though, unbeknownst to the contractor, the promissory note and deed of trust granting it such liens had been executed by relatives of the true property owner, where the property owner had permitted and acquiesced in the construction of the house on his land and the occupancy thereof by his relatives, who had defaulted on the note. Jim Walter Corp. & Mid-State Homes, Inc. v. Gates, 370 So. 2d 928, 1979 Miss. LEXIS 2027 (Miss. 1979).

Holders of vendor's lien, not being "owners " within statute limiting lien, unless alterations are made with owner's written consent, need not consent in writing to waive lien. Azwell v. Mohamed, 164 Miss. 80, 143 So. 863, 1932 Miss. LEXIS 228 (Miss. 1932).

Building erected on lot by owners was subject to lien for materials furnished at instance and request of one of owners, though charged to third person's account; however, material furnished to person other than owner for partial construction of building will not support lien on building, although furnished with owner's knowledge and consent. Stubbs v. Capital Paint & Glass Co., 160 Miss. 832, 131 So. 806, 135 So. 945, 1931 Miss. LEXIS 122 (Miss. 1931).

Structure alone erected by person not owner of land may be subject to mechanic's lien, if detachable from original building without injury to latter. Maryland Casualty Co. v. Adams, 159 Miss. 88, 131 So. 544, 1931 Miss. LEXIS 10 (Miss. 1931).

Any fixture erected or installed by person not owner of land, as well as alterations and repairs on building made by one other than owner, may be subject of mechanic's lien, if detachable from building without injury; but materialman or laborer could not acquire lien on improvement made by mere trespasser without any interest in property, possessory or otherwise. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

Entire house, constructed by person not owner of land, may be subject to mechanic's lien, but not lot, unless work was done with owner's written consent. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

13. Contracts by non-owning spouse.

Residence constructed by wife on lot owned by her was not subject to lien for materials furnished on husband's account, in view of circumstances under which materials were furnished. Stubbs v. Capital Paint & Glass Co., 160 Miss. 832, 131 So. 806, 135 So. 945, 1931 Miss. LEXIS 122 (Miss. 1931).

Statute, if construed to create mechanic's lien on entire residence owned by wife for materials furnished husband on his own account in constructing additional room, would be unconstitutional as taking property without due process. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

Wife's property was not liable for material used in erection of building on her land, purchased by husband without her consent. Schiaffino v. Christ, 96 Miss. 801, 51 So. 546, 1910 Miss. LEXIS 185 (Miss. 1910).

Where a contract for plumbing on the separate property of the wife is made with the husband and on his credit, without the written consent of the wife, her property cannot be held liable. O'Gwinn v. Winner, 25 So. 354 (Miss. 1899).

14. Enforcement of lien.

A lumber contractor who made home improvements with the owners' knowledge and consent but without their written permission was entitled to a lien to cover the cost of improvements for which the price had not been paid only to the extent that the improvements could be removed without damaging the owners' interest in the house where an oral construction contract was negotiated with the daughter of the owners who, although she lived in the house and made payments to her parents equivalent to mortgage pay-

ments, was neither the beneficiary of a resulting trust in the house nor the vendee of an enforceable contract of sale, and thus, had no interest in the house to which the lien could attach. Brown v. Gravlee Lumber Co., 341 So. 2d 907, 1977 Miss. LEXIS 2282 (Miss. 1977).

Where the owner of a service station did not consent either expressly or impliedly to the erection of the awning at the service station, the seller could not enforce lien on the building or on the land. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

Where the original lessee had assigned its leasehold interest to another, who in turn rented to a person who incurred a debt upon which a mechanic's lien was attempted to be enforced, the original lessee was not a necessary and indispensable party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

The owner of the leasehold interest upon which a mechanic's lien is sought to be enforced is a necessary party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

In an action against sublessee and owner of service station by seller of metal awning which was installed at the request of sublessee, the question of whether the awning could be detached and removed from the service station without impairment and damage to the premises, was for the jury. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

Where husband contracted for erection of building on wife's land, materialman, to enforce his lien against building alone, must make wife and contractor parties. Flake v. Central Hardware Co., 96 Miss. 838, 51 So. 461, 1910 Miss. LEXIS 178 (Miss. 1910).

§ 85-7-413. Dissolution of special liens.

(1) The special lien specified in Section 85-7-403(1) shall be dissolved and unenforceable if the owner, purchaser from owner, or lender providing construction or purchase money or any other loan secured by real estate shows that:

(a) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a lien waiver issued by the lien claimant pursuant to Section 85-7-419; or

(b) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a sworn written statement of the contractor that the agreed price or reasonable value of the labor, services or materials has been paid or waived in writing by the lien claimant. If the sworn written statement, as required by the paragraph (b), is falsely and knowingly made, then all parties injured thereby shall have a right of action against the maker of the sworn written statement for damages in the amount of three (3) times their actual damages sustained on account of the willfully and falsely made sworn written statement.

(2) In a lien action, the owner of the improved real estate shall have a defense to the extent of any payment for the work, materials or services that are the subject of the lien made to a contractor or design professional in privity of contract with the owner or to a subcontractor in good-faith reliance upon receipt of a lien waiver pursuant to subsection (1)(a), or upon receipt of a sworn written statement pursuant to subsection (1)(b), and before receipt of notice of the filing by the lien claimant of a notice of lien pursuant to Section 85-7-405 or an affidavit of nonpayment pursuant to Section 85-7-419(5)(b).

HISTORY: Laws, 2014, ch. 487, § 7, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-415. Discharge of lien by filing bond.

(1) When any person entitled under this article to claim a lien against any real estate located in this state files a lien in the office of the clerk of the chancery court of the county in which the real estate is located, the owner of the real estate or the contractor or subcontractor employed to improve the property may, before or after foreclosure proceedings are instituted, discharge the lien upon the approval of a bond by the clerk of the chancery court. The bond shall be conditioned to pay to the holder of the lien the sum that may be found to be due the holder upon the trial of any payment action that may be filed by the lienholder to recover the amount of the claim within one hundred eighty (180) days from the time the claim of lien is filed or as otherwise required by Section 85-7-423. The bond shall be one hundred ten percent (110%) of the amount claimed under that lien and shall be either a cash bond or a bond with good security approved by the clerk of the chancery court and issued by any surety company authorized to do business in the State of Mississippi. Upon approval by the clerk of the bond, the real estate shall be discharged from the lien.

(2) Within seven (7) days of filing the bond required by subsection (1) of this section and any attachments, the party filing the bond shall send a notice of filing the bond and a copy of the bond by registered or certified mail or statutory overnight delivery to the lien claimant at the address stated on the lien or, if no address is shown for the lien claimant, to the person shown as having filed the lien on behalf of the claimant at the indicated address of the person and, if the bond is filed by a contractor or subcontractor, to the owner of the property and the contractor; however, if the lien claimant or the owner or contractor is an entity on file with the Secretary of State's office, sending the notice of filing the bond and a copy of the bond to the company's address or the registered agent's address on file with the Secretary of State shall be deemed sufficient; failure to send the notice of filing the bond and copy of the bond shall not invalidate the bond for purposes of discharge of a claim of lien under this section. With respect to bonds secured by property, the clerk shall not accept any real property bond unless the real property is scheduled in an attached affidavit setting forth a description of the property and indicating the record owner thereof, including any liens and encumbrances and amounts thereof, the market value, and the value of the sureties' interest therein, which affidavit shall be executed by the owner or owners of the interest; the bond and affidavit shall be recorded in the same manner and at the same cost as other deeds of real property. So long as the bond exists, it shall constitute a lien against the property described in the attached affidavit.

(3) The clerk of the chancery court shall have the right to rely upon the amount specified in the claim of lien in determining the sufficiency of any bond to discharge under this section. The failure to specify both the amount claimed due under the lien and the date the claim was due shall result in the lien not constituting notice for any purposes.

(4) The clerk of the chancery court shall be held harmless for good faith regarding any discretionary act in connection with approval of any bond provided for in this section.

HISTORY: Laws, 2014, ch. 487, § 8, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-417. Privileges and benefits of partnerships, corporations or associations with respect to special liens on real estate.

If services are performed or furnished with respect to any real estate by any design professional who is a member of a partnership or who is an agent or employee of a corporation or an association and the contract for the services is made for or on behalf of the owner with the partnership or corporation or association, the partnership, corporation or association shall be entitled to all the privileges and benefits of Section 85-7-403, just as if the partnership, corporation or association were a design professional.

HISTORY: Laws, 2014, ch. 487, § 9, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-419. Waiver and release of lien or bond claim.

(1) A right to claim a lien or to claim upon a bond may not be waived in advance of furnishing of labor, services or materials. Any purported waiver or release of lien, bond claim or this article executed or made in advance of furnishing labor, services or materials is null, void and unenforceable.

(2) When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment other than final payment, the waiver and release shall substantially follow the Interim Waiver and Release upon Payment form set forth in Section 85-7-433(1). The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(3) When a claimant is requested to execute a waiver and release in exchange for or in order to induce making of final payment, the waiver and

release shall substantially follow the Waiver and Release upon Final Payment form set forth in Section 85-7-433(2). The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(4) Nothing contained in this section shall affect:

(a) The enforceability of any subordination of lien rights by a potential lien claimant to the rights of any other party which may have or acquire an interest in all or any part of the real estate or other property for which the potential lien claimant has furnished labor, services or material, even though the subordination is entered into in advance of furnishing labor, services or material, and even though the claimant has not actually received payment in full for its claim;

(b) The enforceability of any waiver of lien rights given in connection with the settlement of a bona fide dispute concerning the amount due the lien claimant for labor, services or material which have already been furnished; or

(c) The validity of a cancellation or release of a recorded claim of lien.

(5)(a) When a waiver and release provided for in this section is executed by the claimant, it shall be binding against the claimant for all purposes, subject only to payment in full of the amount set forth in the waiver and release.

(b) Amounts shall conclusively be deemed paid in full upon the earliest to occur of:

(i) Actual receipt of funds;

(ii) Execution by the claimant of a separate written acknowledgment of payment in full; or

(iii) Sixty (60) days after the date of the execution of the waiver and release, unless before the expiration of the sixty-day period the claimant files in the county in which the property is located an affidavit of nonpayment, using substantially the affidavit of nonpayment form set forth in Section 85-7-433(3), and sends a true and accurate copy of the affidavit of nonpayment to the owner of the property in the manner provided in Section 85-7-405 for sending a notice of a claim of lien to the owner.

(c) A claimant who is paid, in full, the amount set forth in the waiver and release form after filing an affidavit of nonpayment shall upon request execute in recordable form an affidavit swearing that payment in full has been received. Upon recordation thereof in the county in which the affidavit of nonpayment was recorded, the affidavit of nonpayment to which it relates shall be deemed void.

(d) Nothing in this section shall shorten the time within which to file a claim of lien.

(e) Except as provided in Section 85-7-413, a waiver and release provided in accordance with this section shall be suspended upon the filing of an affidavit of nonpayment until payment in full has been received. However, an affidavit of nonpayment shall not affect dissolution of the

claimant's lien or the availability or enforceability of any owner's defenses pursuant to Section 85-7-413, if applicable.

(f) The claimant may rely upon the information contained in the waiver and release form when completing for filing the affidavit of nonpayment.

HISTORY: Laws, 2014, ch. 487, § 10, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-421. Expiration of claim of lien if payment action not timely filed; filing cancellation of fully satisfied lien.

(1) Failure of a lien claimant to commence a payment action to collect the amount of his or her claim within one hundred eighty (180) days from the date of filing the lien renders the claim of lien unenforceable. Any lien filed shall include on the face of the lien the following statement in at least 12 point bold font: "THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED IN THAT TIME PERIOD." Failure to include the required language shall invalidate the lien and prevent it from being filed. No release or voiding of the liens shall be required. A lien shall expire sooner and be disregarded once it is determined that no notice of commencement was timely filed in response to a notice of contest pursuant to Section 85-7-423.

(2) Whenever any lien has been fully satisfied, the holder thereof shall file a cancellation of it in the record in the office of the chancery clerk.

(3) Any holder of a lien, who, after having been fully paid, fails for fifteen (15) days after demand in writing to file a cancellation as provided in subsection (1) of this section, shall be liable to any person thereby injured for the amount of the injury, which shall not be less than Five Hundred Dollars ($500.00) per day that the required cancellation is not timely filed, plus reasonable attorney's fees and costs.

HISTORY: Laws, 2014, ch. 487, § 11, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-423. Shortening the time prescribed in which to file payment action.

(1) An owner or an owner's agent or attorney, or the contractor or contractor's agent or attorney, may elect to shorten the time prescribed in which to commence a payment action to enforce any claim of lien by recording

in the chancery clerk's office a notice in substantially the form set forth in Section 85-7-433(4), along with proof of delivery to the lien claimant.

(2) The clerk of the chancery court shall cross-reference the notice of contest of lien to the lien. The owner or the owner's agent or attorney, or the contractor or the contractor's agent or attorney, shall send a copy of the notice of contest of lien by registered or certified mail or statutory overnight delivery to the lien claimant at the address noted on the face of the lien within seven (7) days of filing. Service shall be deemed complete upon mailing.

(3) The lien shall be extinguished by law upon the earlier of ninety (90) days after the filing of the notice of contest of lien, or one hundred eighty (180) days from the date of lien filing if no payment action is filed in that time period. No release or voiding of the liens shall be required. This subsection shall not be construed to extend the time in which a payment action must begin.

HISTORY: Laws, 2014, ch. 487, § 12, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-425. Computation of time.

The computation of time under this article shall be determined pursuant to Section 1-3-67.

HISTORY: Laws, 2014, ch. 487, § 13, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-427. Enforcement of judgments by special writ of execution.

(1) Judgments establishing the lien, and ordering the property sold for the satisfaction thereof, may be enforced by special writ of execution as set forth in Section 85-7-153.

(2) The delivery of possession by the person claiming the lien shall not affect his lien.

HISTORY: Laws, 2014, ch. 487, § 14, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-429. Liability for falsely and knowingly filing claim of lien without just cause.

(1) Any person who shall falsely and knowingly file the claim of lien

provided in this article without just cause shall be liable to every party injured thereby for a penalty equal to three (3) times the full amount for which the claim was filed, to be recovered in an action by any party so injured at any time within one hundred eighty (180) days from the filing of the claim of lien.

(2) Any person whose rights may be adversely affected by wrongful filing of a claim of lien, as provided by this article may, in addition to the remedies set forth in subsection (1) of this section, apply, upon seven (7) days' notice, to the circuit, county or chancery court, to expunge or vacate the claim of lien, in accordance with Rule 81(d) (2) of the Mississippi Rules of Civil Procedure.

HISTORY: Laws, 2014, ch. 487, § 15, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-431. Payment bond as substitution for subcontractor or materialmen liens.

Where a contractor gives a payment bond providing payment protection to subcontractors and material suppliers to the full extent provided by the Mississippi Little Miller Act found at Section 31-5-51 or the private project bond provision at Section 85-7-432, the payment bond shall be in substitution for the liens provided for a subcontractor or materialman in this article. The contractor's right to a lien is not affected by the provision of a bond.

HISTORY: Laws, 2014, ch. 487, § 16, eff from and after passage (approved Apr. 11, 2014); Laws, 2019, ch. 346, § 2, eff from and after July 1, 2019.

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."
Amendment Notes — The 2019 amendment inserted "or the private project bond provision at Section 85-7-432."

§ 85-7-432. Private project construction bonds; requirements; right to sue; right of action; persons protected by payment bond.

(1) Any person entering into a formal contract for the construction, alteration, or repair of any private building or other private work, before entering into such contract, may furnish to the owner, bonds with good and sufficient surety in which case the bonds shall conform to the requirements of this chapter as follows:

(a) A performance bond shall be payable to, in favor of or for the protection of such owner, for the work to be done in an amount not less than the amount of the contract, conditioned for the full and faithful performance of the contract;

(b) A payment bond shall be payable to the owner but conditioned for the prompt payment of all persons supplying labor or material used in the execution of the work under the contract, for the use of each such person, in an amount not less than the amount of the contract; and

(c) The bonds herein provided for may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department's list of acceptable sureties.

(2) Every person who has furnished labor or material used in the execution of the private work provided for in such contract, in respect of which a payment bond is furnished, and who has not been paid in full for such before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed by him or her or the last of the materials was furnished by him or her and for which such claim is made, provided the same has been approved, where required, by the owner or its architect or engineers, or such approval is being withheld as a result of unreasonable acts of the contractor, shall have the right to sue on such payment bond for the amount, or the balance thereof that is due and payable, but unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment. Notwithstanding anything to the contrary contained herein, if the amount claimed in such action is subject to contractual provisions or conditions, between the parties involved in such action, the action shall be abated pending the performance of such provisions and the fulfillment of such conditions.

(3) Any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the contractor furnishing the private work payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be given in writing by the claimant to the contractor or surety at any place where the contractor or surety maintains an office or conducts business. Such notice may be personally delivered by the claimant to the contractor or surety, or it may be mailed by certified mail, return receipt requested, postage prepaid, or emailed with a receipt of a read receipt, to the contractor or surety. No such action may be maintained by any person not having a direct contractual relationship with the contractor principal, unless the notice required by this section shall have been given.

(4) The only persons protected by such payment bond, subject to the notice provisions of this section are:

(a) Subcontractors and material suppliers of the contractor;

(b) Sub-subcontractors and material suppliers of those subcontractors named in subsection (4)(a) of this subsection; and

(c) Laborers who have performed work on the project site.

(5)(a) When suit is instituted on a performance bond given in accordance with this chapter, it shall be commenced within one (1) year after the obligee shall have made final payment on the contract; provided, however, if the contract is abandoned by the general contractor as bond principal or is terminated by the bond obligee, suit shall be commenced within one (1) year after the earlier of the abandonment by the bond principal or termination by the bond obligee.

(b) When suit is instituted on a payment bond given in accordance with this chapter, it shall be commenced within one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing the action and not later.

(c) Any suit brought on a performance or payment bond given in accordance with this chapter shall be brought in the county in which the contract or some part thereof was performed or in the county in which service of process may be obtained upon either the principal or the surety on such bond. Service of process on the surety through the Commissioner of Insurance does not satisfy the venue requirement of this section.

(6) Any person supplying labor or materials for the execution of the work shall, upon a written request to the owner/obligee, or to the contractor/principal, be furnished promptly with a true and correct copy of the contract and bonds within thirty (30) days of the request or the recipient of the request shall thereafter become liable for reasonable attorney's fees and costs in any subsequent action under this section. The written request may be evidenced by any reliable means of delivery.

(7) Whenever any person supplying labor or material in the execution of the work brings an action on such payment bond and the trial judge finds that the defense raised to such action by the contractor or surety was not reasonable, or not in good faith, or merely for the purpose of delaying payment, then the trial judge may, in his discretion, award the claimant a reasonable amount to be determined by the trial judge as claimant's attorney's fees in bringing such successful action. Likewise, if the trial judge finds that such action was brought by claimant without just cause or in bad faith, the trial judge may, in his discretion, award the contractor or surety a reasonable amount to be determined by the trial judge as attorney's fees for defending such action; provided, however, this section shall not affect the right of any person to recover attorney's fees where provided by contract or bond.

HISTORY: Laws, 2019, ch. 346, § 1, eff from and after July 1, 2019.

§ 85-7-433. Forms; interim waiver and release upon payment; waiver and release upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

(1) The following form is the Interim Waiver and Release Upon Payment form referred to in Section 85-7-419:

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF MISSISSIPPI
COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF _____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

_____
SIGNATURE
BY: _____
(PRINT NAME)
ITS: _____
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20____.

_____
NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

(2) The following form is the Waiver and Release Upon Final Payment form referred to in Section 85-7-419:

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF MISSISSIPPI
COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

_____
SIGNATURE

BY: _____
(PRINT NAME)

ITS: _____
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20_____.

_____
NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

_____
SIGNATURE

BY: _____
(PRINT NAME)

ITS: _____
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20_____.

_____
NOTARY PUBLIC

(3) The following form is the Affidavit of Nonpayment referred to in Section 85-7-419:

AFFIDAVIT OF NONPAYMENT

STATE OF MISSISSIPPI
COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

PURSUANT TO SECTION 85-7-419 THE UNDERSIGNED EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED _____, ____. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE ($_____) HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE NONPAYMENT.

THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE UNDERSIGNED.

_____
SIGNATURE

BY: _____
(PRINT NAME)

ITS: _____
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20_____.

_____
NOTARY PUBLIC

WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT, THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY

REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED SUFFICIENT.

(4) The following form is the Notice of Contest of Lien form referred to in Section 85-7-423:

NOTICE OF CONTEST OF LIEN

STATE OF MISSISSIPPI
COUNTY OF _____
TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF LIEN FILED BY YOU ON _____ 20_____, AND RECORDED IN _____ BOOK _____, PAGE _____ OF THE PUBLIC RECORDS OF _____ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY _____, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE. THIS _____ DAY OF _____, 20_____.

THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF 1972, WITHIN NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A LIS PENDENS NOTICE OF THE PAYMENT ACTION WITH THE CHANCERY CLERK UPON COMMENCEMENT OF THE PAYMENT ACTION WITH A COPY TO THE LIEN CLAIMANT, OWNER AND CONTRACTOR.

_____
SIGNATURE

BY: _____
(PRINT NAME)

ITS: _____
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20_____.

_____
NOTARY PUBLIC

(5) The following form is the Pre-Lien Notice form referred to in Section 85-7-409(3):

PRE-LIEN NOTICE TO OWNER

TO: [NAME AND ADDRESS OF OWNER]

TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE

OF 1972, WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY COMMONLY KNOWN AS _____ ("THE PROPERTY"), FOR THE SUM OF $ _____ FOR WHICH THE UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM THE DATE HEREOF.

SO NOTIFIED, THIS THE _____ DAY OF _____, 20_____.

LIEN CLAIMANT: _____
(PRINT NAME)
BY: _____
(SIGNATURE)
ITS: _____
(PRINT TITLE)

HISTORY: Laws, 2014, ch. 487, § 17; Laws, 2015, ch. 348, § 1, eff from and after July 1, 2015.

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

Amendment Notes — The 2015 amendment in the first and second paragraphs of (4), substituted "NINETY (90)" for "SIXTY (60)", substituted "FILE A LIS PENDENS NOTICE OF THE PAYMENT ACTION WITH THE CHANCERY CLERK UPON COMMENCEMENT OF THE PAYMENT ACTION WITH A COPY THE LIEN CLAIMANT, OWNER AND CONTRACTOR" for "FILE A NOTICE OF COMMENCEMENT OF PAYMENT ACTION WITHIN THIRTY (30) DAYS OF FILING THE ABOVE-REFERENCED PAYMENT ACTION" at the end of the last paragraph in (4).

ARTICLE 23.

COMMERCIAL REAL ESTATE BROKER LIEN ACT.

Sec.

85-7-501. Short title.
85-7-503. Definitions.
85-7-505. Commercial real estate lien.
85-7-507. When lien attaches to commercial real estate.
85-7-509. Lien notice, content.
85-7-511. Lien claimant to mail copy of notice of lien to owner(s) by certified mail.
85-7-513. Enforcing lien.
85-7-515. Complaint; content; parties' foreclosure action; procedure.
85-7-517. When lien claim release or satisfaction to be filed; extinguishment on certain conditions.
85-7-519. Cost of proceeding to be paid by nonprevailing party.
85-7-521. Discharge of lien.
85-7-523. Remedy for lien wrongly filed.
85-7-525. Priority of deeds of trust or mortgages, tax liens and other liens.
85-7-527. Repealed.

§ 85-7-501. Short title.

This article shall be known and may be cited as the "Commercial Real Estate Broker Lien Act."

HISTORY: Laws, 2014, ch. 522, § 1; reenacted without change, Laws, 2017, ch. 348, § 1, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-503. Definitions.

As used in this article, the following terms have the following meanings:

(a) "Broker" means a real estate broker licensed pursuant to Section 73-35-3(1).

(b) "Broker services" means services for which a license issued by the Mississippi Real Estate Commission is required under Section 73-35-1 et seq.

(c) "Commercial real estate" means any real property or any and every interest or estate in land, including leaseholds, timeshares and condominiums, whether corporeal or incorporeal, freehold or nonfreehold, but excluding oil, gas or mineral leases and any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever, which at the time the property or interest is made the subject of an agreement for broker services:

(i) Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes or for multifamily residential purposes involving five (5) or more dwelling units; or

(ii) May lawfully be used for any of the purposes listed in this paragraph (c) by a duly enacted zoning ordinance or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in this paragraph (c) which is under consideration by the government agency with authority to approve the amendment; or

(iii) Is in good faith intended to be immediately used for any of the purposes listed in this paragraph (c) by the parties to any contract, lease, option or offer to make any contract, lease, or option.

(d) "Compensation" means any compensation that is due a broker for performance of broker services.

(e) "Lien claimant" means a broker claiming a lien under this article.

(f) "Owner" means the owner of record of any interest in commercial real estate.

HISTORY: Laws, 2014, ch. 522, § 2; Laws, 2015, ch. 327, § 1; reenacted without change, Laws, 2017, ch. 348, § 2, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2015 amendment inserted "or for multifamily residential

purposes" in (c)(i).

The 2017 amendment reenacted the section without change.

§ 85-7-505. Commercial real estate lien.

(1) A broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner's duly authorized agent, if:

(a) The broker has performed under the provisions of the agreement;

(b) The written agreement for broker services clearly sets forth the broker's duties to the owner; and

(c) The written agreement for broker services sets forth the conditions upon which the compensation shall be earned and the amount of the compensation.

(2) The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent.

(3) A broker's lien is not valid or enforceable against a grantee or purchaser of an interest in the commercial real estate conveyed by the person owing the compensation if the grantee or purchaser is taking the property without existing tenants or leases covered by a written agreement for broker services if the deed or instrument transferring the interest is recorded before the broker's notice of lien is recorded.

HISTORY: Laws, 2014, ch. 522, § 3; reenacted without change, Laws, 2017, ch. 348, § 3, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-507. When lien attaches to commercial real estate.

A lien authorized by this article attaches to the commercial real estate only when the lien claimant files a timely notice of the lien in the office of the chancery clerk in the county in which the commercial real estate is located. A notice of lien is timely if it is filed after the claimant's performance under the written agreement for broker services and before the conveyance or transfer of the commercial real estate that is the subject of the lien, except in cases where payments of compensation are due in installments or upon renewal. When payment of compensation to a broker is due in installments or upon renewal under the written agreement for broker services, a portion of which is due or may become due after the conveyance or transfer of the commercial real estate, a single claim for a lien filed before transfer or conveyance of the commercial real estate claiming all compensation due in installments or upon renewal shall be valid and enforceable for a period of one (1) year from the date of filing as it pertains to payments due after the transfer or conveyance; however, as payments or partial payments of compensation are received, the broker shall

provide partial releases for those payments, thereby reducing the amount due the broker under the broker's lien. The notice of single claim for a lien may be renewed for a period of one (1) year by the filing of a renewal notice meeting the requirements of this article before the expiration of the expiring notice, and may be likewise renewed from year to year so long as installments of compensation or renewal compensation are due. Notwithstanding any notice of single claim for a lien filed, when payment of compensation to a broker is due in installments or contingent upon renewals under the written agreement for broker services, a portion of which is or would be due after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due or becoming due after the transfer or conveyance may be recorded after the transfer or conveyance of the commercial real estate and within ninety (90) days of the date on which the payment is due; in that case the lien shall be effective as a lien against the transferee's interest in the commercial real estate as of the date filed and, in the case of a lease or transfer of a nonfreehold interest, the lien shall be effective as a lien against the owner's interest in the commercial real estate as of the date filed.

HISTORY: Laws, 2014, ch. 522, § 4; reenacted without change, Laws, 2017, ch. 348, § 4, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-509. Lien notice, content.

(1) A lien notice under this article shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

(2) The lien notice shall include all of the following information:

(a) The name of the lien claimant;

(b) The name of the owner;

(c) A description of the commercial real estate upon which the lien is being claimed;

(d) The amount for which the lien is claimed and whether the amount is due in installments; and

(e) The claimant's grounds for the lien, including a reference to the written agreement for broker services that is the basis for the lien. It is not necessary that the written agreement for broker services be attached to the notice.

(3) The chancery clerk shall index properly filed liens in the "Notice of Construction Liens" record maintained in his office as provided under Section 85-7-133.

HISTORY: Laws, 2014, ch. 522, § 5; reenacted without change, Laws, 2017, ch. 348, § 5, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-511. Lien claimant to mail copy of notice of lien to owner(s) by certified mail.

Any lien claimant who files a lien on commercial real estate under the provisions of this article shall mail a copy of the notice of the lien to the owner(s) of the commercial real estate by certified mail, return receipt requested, or shall serve a copy of the notice of the lien in accordance with any of the provisions for service of process set forth in the Mississippi Rules of Civil Procedure, as amended from time to time. The lien claimant shall file proof of service with the chancery clerk. The lien is void if the lien claimant does not file and serve the lien as provided in this section.

HISTORY: Laws, 2014, ch. 522, § 6; reenacted without change, Laws, 2017, ch. 348, § 6, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-513. Enforcing lien.

A lien claimant may bring suit to enforce a lien that attaches under the provisions of this article in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant shall begin proceedings within one (1) year after filing the notice of lien, and failure to begin proceedings within the one (1) year shall extinguish the lien. If a claim is based upon an option to acquire an interest in commercial real estate, the lien claimant shall begin proceedings within one (1) year of the option to purchase being exercised. A claim for the same lien extinguished under this section may not be asserted in any later proceeding. A lender shall not be made a party to any suit to enforce a lien under this article unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien.

HISTORY: Laws, 2014, ch. 522, § 7; reenacted without change, Laws, 2017, ch. 348, § 7, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-515. Complaint; content; parties' foreclosure action; procedure.

(1) A complaint filed under the provisions of this article shall contain all of the following:

(a) A statement of the terms of the written agreement for broker services on which the lien is based or a copy of the written contract or agreement;

(b) The date when the written agreement for broker services was made;

(c) A description of the services performed;

(d) The amount due and unpaid;

(e) A description of the property that is subject to the lien; and

(f) Any other facts necessary for a full understanding of the rights of the parties.

(2) The plaintiff shall file the action against all parties that have an interest of record in the commercial real estate; provided that a lender shall not be made a party to any suit to enforce a lien under this article unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien. A foreclosure action for a lien claimed under this article shall be brought under the provisions of this section.

(3) Upon filing a complaint, the plaintiff shall file with the chancery clerk of each county where the commercial real estate, or any part thereof, is situated a lis pendens notice in accordance with Section 11-47-3.

HISTORY: Laws, 2014, ch. 522, § 8; reenacted without change, Laws, 2017, ch. 348, § 8, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-517. When lien claim release or satisfaction to be filed; extinguishment on certain conditions.

If a notice of lien has been filed with the chancery clerk and the claim has been paid in full or in part, or if a condition occurs that would preclude the lien claimant from receiving compensation, in whole or in part, under the terms of the written agreement for broker services on which the lien is based, the lien claimant shall promptly, and in no event more than thirty (30) days after a properly served written demand of the owner, lienee, or other authorized agent, file with the chancery clerk and serve upon the owner(s) of record a written release, partial release or satisfaction of the lien. If a lien claimant fails to file a suit to enforce the lien within the time prescribed by this article or fails to file an answer in a pending suit to enforce a lien within thirty (30) days after

a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service under the Mississippi Rules of Civil Procedure, as amended from time to time. The claimant shall promptly file proof of properly served written demand with the chancery clerk. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this article.

HISTORY: Laws, 2014, ch. 522, § 9; reenacted without change, Laws, 2017, ch. 348, § 9, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-519. Cost of proceeding to be paid by nonprevailing party.

The costs of any proceeding brought to enforce a lien filed under this article, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one (1) party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

HISTORY: Laws, 2014, ch. 522, § 10; reenacted without change, Laws, 2017, ch. 348, § 10, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-521. Discharge of lien.

Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, any claim of lien on commercial real estate filed under this article may be discharged by any of the following methods:

(a) The lien claimant of record, the claimant's lawful agent, or the claimant's duly authorized attorney-in-fact, in the presence of the chancery clerk or a notary public, may acknowledge in writing the satisfaction of the claim of lien on the commercial real estate indebtedness and file the same with the chancery clerk, after which the chancery clerk shall enter on the record of the claim of lien on the commercial real estate the acknowledgment of satisfaction.

(b) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record in the presence of the chancery clerk or a notary public, which instrument states that the claim of lien on the commercial real estate indebtedness has been paid or satisfied, after which the chancery clerk shall cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the claim of lien on the commercial real estate.

(c) By failure to enforce the claim of lien on the commercial real estate within the time prescribed by this article.

(d) By filing in the office of the chancery clerk the original or attested copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on the commercial real estate has been dismissed or finally determined adversely to the claimant.

(e) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate are deposited with the chancery clerk to be applied to any payment finally determined to be due, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(f) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned upon the payment of the amount finally determined to be due in satisfaction of the claim of lien on the commercial real estate is deposited with the chancery clerk, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(g) By failure to file a written release or satisfaction of a lien when required by this article or to timely file or take other action required by this article.

HISTORY: Laws, 2014, ch. 522, § 11; reenacted without change, Laws, 2017, ch. 348, § 11, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-523. Remedy for lien wrongly filed.

Any broker who falsely and maliciously files or causes to be filed a notice of lien under this article that brings in question or disparages the title to

property may be held liable in a civil action for damages, in which case damages shall be recoverable up to two (2) times the amount of monetary damages caused by the broker's false and malicious acts, in addition to any other damages.

HISTORY: Laws, 2014, ch. 522, § 12; reenacted without change, Laws, 2017, ch. 348, § 12, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-525. Priority of deeds of trust or mortgages, tax liens and other liens.

All deeds of trust or mortgages, all purchase money mortgages and all liens for ad valorem taxes, regardless of when recorded, and all other liens afforded priority by law or recorded before the recording of the broker's lien provided by this article shall have priority over the broker's lien.

HISTORY: Laws, 2014, ch. 522, § 13; reenacted without change, Laws, 2017, ch. 348, § 13, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."
Amendment Notes — The 2017 amendment reenacted the section without change.

§ 85-7-527. Repealed.

Repealed by Laws of 2017, ch. 348, § 14, effective July 1, 2017.
§ 85-7-527. [Laws, 2014, ch. 522, § 14, eff from and after July 1, 2014.]

Editor's Notes — Former § 85-7-527 was the repealer for §§ 85-7-501 through 85-7-527, effective July 1, 2017.

CHAPTER 11.

MISSISSIPPI UNIFORM STATE TAX LIEN REGISTRATION ACT

Sec.
85-11-1. Short title.
85-11-3. Purpose and scope of chapter.
85-11-5. Definitions.
85-11-7. Notice of tax lien; enrollment in tax lien registry.
85-11-9. Perfection of tax lien; tax lien as authority for issuance of writs and warrants.

Sec.

85-11-11. Payments to circuit clerks for service provided to citizens for researching and providing lien information.
85-11-13. Effect of notice of tax lien; duration of lien; reenrollment of tax lien.
85-11-15. Cancellation of notice of tax lien upon discovery of administrative issue.
85-11-17. Release of tax lien; enrollment of new tax lien under certain circumstances.
85-11-19. Tax lien registry; information to be included; certification of records on the tax lien registry; sale of bulk information appearing on tax lien registry; limitation on uses of tax lien registry information.
85-11-21. Enrollment on tax lien registry of certain unsatisfied tax liens appearing on county judgment rolls.
85-11-23. Rules and regulations.

§ 85-11-1. Short title.

This chapter may be cited as the Mississippi Uniform State Tax Lien Registration Act.

HISTORY: Laws, 2014, ch. 412, § 1, eff from and after Jan. 1, 2015.

§ 85-11-3. Purpose and scope of chapter.

(1) The purpose of this chapter is to provide a uniform statewide system for filing notices of tax liens to be maintained by the Department of Revenue that are in favor of or enforced by the Mississippi Department of Revenue.

(2) The scope of this chapter is limited to tax liens in real property and personal property, tangible and intangible, of taxpayers or other persons against whom the Mississippi Department of Revenue has liens pursuant to law for unpaid finally determined tax liabilities administered by the Mississippi Department of Revenue.

HISTORY: Laws, 2014, ch. 412, § 2, eff from and after Jan. 1, 2015.

§ 85-11-5. Definitions.

As used in this chapter:

(a) "Commissioner" means the Commissioner of Revenue of the Mississippi Department of Revenue.

(b) "Debtor" and "judgment debtor" means a taxpayer or other person against whom there is an unpaid finally determined tax liability collectible by the Mississippi Department of Revenue.

(c) "Department" means the Mississippi Department of Revenue.

(d) "Finally determined tax liabilities" means any state tax, fee, penalty, and/or interest owed by a person to the Mississippi Department of Revenue where the assessment of the liability is not subject to any further timely filed administrative or judicial review.

(e) "Last-known address of the debtor" means the address of the debtor appearing on the records of the department at the time the notice of tax lien is enrolled in the Uniform State Tax Lien Registry.

(f) "Person" means an individual, organization or legal entity.

(g) "Uniform State Tax Lien Registry" or "Tax Lien Registry" means the public database maintained by the department wherein tax liens enrolled in favor of and enforced by the department are filed.

HISTORY: Laws, 2014, ch. 412, § 3, eff from and after Jan. 1, 2015.

§ 85-11-7. Notice of tax lien; enrollment in tax lien registry.

(1) If any person refuses to pay any finally determined tax liabilities, the commissioner may enroll in the tax lien registry a notice of tax lien for the finally determined tax liabilities due.

(2) The notice of tax lien file shall include:

(a) The name and last-known address of the debtor;

(b) The name and address of the department;

(c) The tax lien number assigned to the lien by the department; and

(d) The basis for the tax lien, including, but not limited to, the amount owed as of the date of enrollment in the tax lien registry.

HISTORY: Laws, 2014, ch. 412, § 4, eff from and after Jan. 1, 2015.

§ 85-11-9. Perfection of tax lien; tax lien as authority for issuance of writs and warrants.

(1) When a notice of tax lien is enrolled by the department in the tax lien registry, the tax lien is perfected and shall be attached to all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi.

(2) The perfected tax lien shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of enrollment in the tax lien registry.

(3) The amount of the tax lien shall be a debt due the State of Mississippi and shall remain a lien upon all property and rights to property belonging to the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi, including choses in action, with the same force and like effect as any enrolled judgment of a court of record. Interest and penalty shall accrue on the tax lien at the same rate and with the same restrictions, if any, as specified by statute for the accrual of interest and penalty for the type of tax or taxes for which the tax lien was issued.

(4) The notice of tax lien shall serve as authority for issuance of writs of execution, writs of attachment, writs of garnishment, or other remedial writs. In addition to those writs, the notice of tax lien shall also serve as authority for the commissioner to issue warrants under Sections 27-7-57, 27-13-31 and 27-65-59 for the collection of the tax lien. The tax lien enrolled in the tax lien registry shall constitute the judgment enrolled for the payment of the amount

of tax, penalties, and interest referred to in Sections 27-7-57, 27-13-31 and 27-65-59, but the warrant issued for a tax lien enrolled on a tax lien registry shall direct and authorize the special agent to seize and sell the real and personal property found anywhere within this state that belongs to the taxpayer against whom the tax lien was enrolled and not just property in a specific county. Once issued, the execution of the warrants shall be in accordance with Section 27-3-33(4) for the levy on salaries, compensation or other monies due the delinquent taxpayer; Sections 27-7-61 through 27-7-67 in regard to income tax and withholding tax; Sections 27-13-35 through 27-13-41 for franchise tax; and Sections 27-65-63 through 27-65-69 for sales tax and any other tax or fee administered by the department that utilizes the administrative provisions of the sales tax law in the administration of the tax or fee. Under warrants issued for the tax liens enrolled in the tax lien registry, any property, real or personal, within the State of Mississippi is subject to levy under Section 27-3-33(4) if the person that owes the salary, compensation or other monies to the debtor is subject to service of process in this state.

HISTORY: Laws, 2014, ch. 412, § 5, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2) by substituting "pledgees" for "pledges." The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 85-11-11. Payments to circuit clerks for service provided to citizens for researching and providing lien information.

Beginning with calendar year 2015 and each year thereafter, on January 15 and July 15 of each year, the department shall pay to the Mississippi circuit clerks an amount equal to half of the yearly average amount paid for the three (3) fiscal year periods ending June 30, 2011, 2012 and 2013, to each county for the enrollment, reenrollment, and/or release of the tax liens under this chapter. The payment shall be used for the service provided to citizens that request assistance from circuit clerks for researching and providing lien information, whether such information is on the lien registry or included in historical documents. The clerks shall report the number of citizens assisted to the department on or before June 30 of each year. The commissioner is authorized to pay the clerks out of funds appropriated by the Legislature to defray expenses of the department.

HISTORY: Laws, 2014, ch. 412, § 6, eff from and after Jan. 1, 2015.

§ 85-11-13. Effect of notice of tax lien; duration of lien; reenrollment of tax lien.

(1) A notice of tax lien shall be a lien upon the debtor's property located anywhere in the state for a period of seven (7) years from the date of enrollment unless:

(a) It is sooner released by the department; or

(b) The department reenrolls the notice of tax lien before the expiration of the seven (7) years. There shall be no limit upon the number of times that the department may reenroll notices of tax liens.

(2) In the event that a notice of tax lien lapses on the expiration of seven (7) years, the notice of tax lien may, at any time thereafter and in the sole discretion of the department, be reenrolled. A notice of tax lien that is reenrolled pursuant to this subsection shall be fully enforceable as of the date of reenrollment; however, any notice of tax lien that is reenrolled after the lapse of the seven-year period shall lose the priority it had prior to its expiration. There shall be no limit upon the number of times that the department may reenroll notices of tax liens in this manner.

(3) If the department reenrolls a notice of tax lien, the notice of tax lien in regard to that reenrollment shall contain the following information:

(a) The name and last-known address of the debtor;

(b) The name and address of the department;

(c) An indication that the notice of tax lien is for a previously enrolled lien;

(d) The tax lien number assigned to the lien by the department; and

(e) The basis for the tax lien, including, but not limited to, the amount owed as of the date of reenrollment in the tax lien registry.

(4) The reenrollment of a tax lien in the tax lien registry within the seven-year period shall constitute a continuation of the tax lien appearing on the judgment roll of the county as it relates to real and personal property belonging to the debtor in that county; however, the reenrolled tax lien shall attach to all property and all rights to property belonging to the debtor, both real and personal, tangible and intangible, located in any and all counties within the state as of the date of the reenrollment in the tax lien registry. A notice of release of tax lien filed in the tax lien registry shall constitute a release of tax lien within the department, the tax lien registry, and/or the county in which the tax lien was previously enrolled. The information contained on the tax lien registry shall be controlling, and any inconsistencies found between the tax lien registry and the judgment roll of any county shall be superseded by the tax lien registry.

HISTORY: Laws, 2014, ch. 412, § 7, eff from and after Jan. 1, 2015.

§ 85-11-15. Cancellation of notice of tax lien upon discovery of administrative issue.

Within two (2) working days from the date the department discovers an administrative issue in the filing of a notice of tax lien in the tax lien registry, it may cancel a notice of tax lien from the tax lien registry and file a notice of release of the tax lien due to administrative correction. The notice of tax lien shall be treated as though never enrolled.

HISTORY: Laws, 2014, ch. 412, § 8, eff from and after Jan. 1, 2015.

§ 85-11-17. Release of tax lien; enrollment of new tax lien under certain circumstances.

(1) Within fifteen (15) working days from the receipt by the department of full payment of a tax lien enrolled in the tax lien registry, including payment of any additionally accruing interest, penalty, fees and/or costs, the department shall file in the tax lien registry a notice of release of the tax lien being paid.

(2) In the event that a notice or release of tax lien is issued in error by the department and enrolled in the tax lien registry; or the form of payment received by the department is not honored and/or the transfer of payment to the department is not completed for any reason after the notice of release of tax lien is enrolled in the tax lien registry; or the department is required to return and/or turn over the payment received to the taxpayer or other person due to bankruptcy, a court order, or other proceedings after the notice of release of the tax lien issued is enrolled in the tax lien registry; the department, in its sole discretion, may enroll a new tax lien for the finally determined tax liabilities represented in the tax lien for which the tax lien was issued, including any additional accruing interest, penalty and/or fees to the date of the new enrollment. A notice of tax lien that is enrolled pursuant to this provision shall be fully enforceable as of the date of the new enrollment.

HISTORY: Laws, 2014, ch. 412, § 9, eff from and after Jan. 1, 2015.

§ 85-11-19. Tax lien registry; information to be included; certification of records on the tax lien registry; sale of bulk information appearing on tax lien registry; limitation on uses of tax lien registry information.

(1) The department shall maintain notices of tax liens filed in the tax lien registry after January 1, 2015 in its information management system in a form that permits them to be readily accessible in an electronic form through the Internet and to be reduced to printed form. The electronic and printed form shall include the following information:

(a) The name of the taxpayer as judgment debtor;

(b) The name and address of the department;

(c) The tax lien number assigned to the lien by the department;

(d) Whether the enrollment is the first enrollment of the tax lien or a reenrollment of the tax lien;

(e) The amount of the taxes, penalties, interest, and fees indicated due on the notice of tax lien received from the department; and

(f) The date and time of enrollment or reenrollment.

(2) The department shall not charge for the access to information on the enrollment of tax liens by name of judgment debtor or by tax lien number. The department is, however, authorized to charge for the certification of any record or lack of records appearing on the tax lien registry. The department shall determine the process by which such tax lien registry certification can be

requested, including a charge for such certification that shall cover at least the cost of providing the certification. The payment of the charge for a tax lien registry certification shall be retained by the department as reimbursement of its cost to provide the certification.

(3) The department is authorized to sell at bulk the information appearing on the tax lien registry. In selling the information, the department shall determine the process by which the information will be sold and the media or method by which it will be available to the purchaser and shall set a price for the information that will at least cover the cost of producing the information. The proceeds from the sale of bulk information shall be retained by the department and used to cover its cost to produce the information sold and to maintain the tax lien registry.

(4) Tax lien registry information, whether accessed by name of judgment debtor or by tax lien number at no charge, through a bulk sale of information or by other means, will not be used for a survey, marketing or solicitation purposes. Survey, marketing or solicitation purpose shall not include any action by the department or its authorized agent to collect a debt represented by a tax lien appearing in the tax lien registry. The department or the Attorney General is hereby authorized to bring an action to enjoin the unlawful use of tax lien registry information for a survey, marketing or solicitation purpose and to recover the cost of such action, including reasonable attorney's fees.

HISTORY: Laws, 2014, ch. 412, § 10, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4) by substituting "whether accessed" for "whether access." The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 85-11-21. Enrollment on tax lien registry of certain unsatisfied tax liens appearing on county judgment rolls.

All tax liens currently enrolled appearing on the judgment rolls of the counties of this state as of January 1, 2015 and which the department does not show as satisfied or as issued in error and which were last enrolled or reenrolled on the judgment rolls within seven (7) years before January 1, 2015 shall be immediately enrolled on the tax lien registry on January 1, 2015, and shall have the force and effect of a judgment on all real and personal property belonging to the debtor anywhere in the state for a duration of seven (7) years effective from the date of the enrollment on the tax lien registry unless and until such time as either the notice of tax lien is released or the department reenrolls the tax lien in the tax lien registry.

HISTORY: Laws, 2014, ch. 412, § 11, eff from and after Jan. 1, 2015.

§ 85-11-23. Rules and regulations.

The department shall have the authority to promulgate rules and regula-

tions, not inconsistent with this chapter, as it may deem necessary to enforce its provisions.

HISTORY: Laws, 2014, ch. 412, § 12, eff from and after Jan. 1, 2015.

CHAPTER 13.

AUTOMATED DATA MATCH SYSTEM FOR IDENTIFYING AND SEIZING FINANCIAL ASSETS OF OBLIGORS IDENTIFIED BY DEPARTMENT OF REVENUE

Sec.

85-13-1. Definitions.
85-13-3. Commissioner to develop, maintain and operate automated data match system; purpose; procedure; review of information to determine if department should serve levy to financial institution.
85-13-5. Financial institution's use of certain existing data match systems; immunity from liability; disclosure of certain information; violation by financial institution or employee.

§ 85-13-1. Definitions.

As used in this chapter:

(a) "Commissioner" means the Commissioner of Revenue of the Mississippi Department of Revenue.

(b) "Department" means the Mississippi Department of Revenue.

(c) "Finally determined tax liabilities" means any state tax, fee, penalty, and/or interest owed by a person to the department where the assessment of the liability is not subject to any further timely filed administrative or judicial review.

(d) "Person" means a natural person, partnership, limited partnership, corporation, limited liability company, estate, trust, association, joint venture, other legal entity or other group or combination acting as a unit, and includes the plural as well as the singular in number.

(e) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association or credit union authorized to do business and accept deposits in this state under state or federal law.

(f) "Account" means any money held in the name of an account owner, individually or jointly with another, including, but not limited to, a deposit account, demand account, savings account, negotiable order of withdrawal account, share account, member account, time certificate of deposit, or money market account. "Account" shall not include money held by a financial institution where the obligor is listed in a capacity other than the owner, including, but not limited to, an authorized signer only, custodian, payable on death beneficiary or agent.

(g) "Obligor" means any person against whom a tax judgment for a finally determined tax liability has been enrolled in the Uniform State Tax

Lien Registry for which collection of the tax debt is enforceable as provided by law.

(h) "Levy" means a Distress Warrant for the Levy Of Monies Owed To Taxpayer(s) which is an instrument of the commissioner that binds monies held by the garnishee and owed to the obligor.

(i) "Identifying information" means an obligor's social security number or federal tax identification number.

HISTORY: Laws, 2017, ch. 407, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (h) by substituting "binds" for "bind." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

§ 85-13-3. Commissioner to develop, maintain and operate automated data match system; purpose; procedure; review of information to determine if department should serve levy to financial institution.

(1) The commissioner shall develop, maintain and operate an automated data match system for the purpose of identifying and seizing the financial assets of obligors as identified by the department.

(2) The commissioner may provide financial institutions a quarterly, electronic inquiry file containing names and identifying information of obligors. Within thirty (30) days of receipt of the inquiry file, the financial institution agreeing to use the data match system shall match the file against its own records for the purpose of identifying whether an account for an obligor is held by the financial institution and notify the department of its findings. When a match is identified, the financial institution shall provide the department the names and identifying numbers on record for the accounts, account numbers, and the account balances as of the date of response back to the department.

(3) A financial institution may request an extension of time to file the information required. Extensions of time are not automatically granted and the reporting institution must demonstrate good cause for requesting the extension. An extension of time for filing the required information may be granted if the request for extension is filed with the commissioner by the date on which the reports are due.

(4) Upon receiving the information from the financial institution and pursuant to the provisions of Section 27-3-33, the commissioner shall review such account information to determine if the department should serve a levy to the financial institution. The levy shall be served either by mail or by delivery by an agent of the commissioner. Not more than twenty-five (25) levies per day shall be served on a financial institution that participated in the data match system. The levy shall require the financial institution to encumber or surrender assets held by the institution on behalf of the obligor. For a financial

institution participating in the data match program, the answer shall be made at any time within thirty (30) days after the service of the levy in the form and manner determined by the commissioner. Any amount encumbered and forwarded by the financial institution under this chapter shall not exceed the amount of the warrant.

(5) The financial institution agreeing to use the data match system shall be held to account for only the funds on deposit between the time of service of the levy and the time of its answer, and shall have no obligation to account for additional deposits accruing after the time of its answer to the department. The financial institution may serve its answer within a reasonable time not to exceed thirty (30) days and shall not be held to account for any indebtedness that arises subsequent to service of its answer or property that may come into its hands subsequent to the service of the levy.

(6) The commissioner may develop and provide a system wherein the levy may be delivered and responded to electronically by a financial institution, and the response may include, but shall not require, the electronic transfer of funds.

(7) The commissioner shall adopt a regulation establishing the procedures and requirements for conducting automated data matches with financial institutions pursuant to this chapter as soon as practicable after July 1, 2017.

HISTORY: Laws, 2017, ch. 407, § 2, eff from and after July 1, 2017.

§ 85-13-5. Financial institution's use of certain existing data match systems; immunity from liability; disclosure of certain information; violation by financial institution or employee.

(1) If a financial institution has a current data match system used in compliance with the child support data match system provided for in Section 43-19-48, the financial institution may use that system to comply with the provisions of this chapter. The department shall not require a financial institution to change the file format established with the Department of Human Services in order to comply with this chapter.

(2) A financial institution, including its directors, officers, employees, attorneys, accountants or other agents, is immune from any liability under any law or regulation to any person for the disclosure of information pursuant to this chapter and for the encumbrance, seizure, or surrender of any assets held by the financial institution in response to a levy issued by the department. A financial institution is not liable for any action taken in good faith to comply with the requirements of this section.

(3) Except as otherwise provided in this subsection, a financial institution furnishing a report or providing information to the commissioner is prohibited from disclosing to a depositor or an account holder that the name of the person has been received from or furnished to the commissioner; however, financial institutions may, but are not required to, disclose to their depositors or account

holders that the department has the authority to request and receive certain identifying information provided for under this chapter for state tax collection purposes. Financial institutions may, but are not required to, notify a depositor of account holder of the receipt of a levy and imposition of a hold on the depositor's or holder's account.

(4) An authorized agent transmitting data electronically on behalf of financial institutions is subject to the same terms, conditions, and confidentiality provisions that apply to such institutions, as set forth in this chapter.

(5) If a financial institution or any employee of the financial institution willfully violates the provisions of this chapter, the financial institution is liable for the lesser of the amount in the account of the depositor or account holder on the date of submittal of the answer by the financial institution or the dollar amount listed on the levy.

(6) A financial institution may not disclose any information contained in a request for information by the commissioner except to authorized employees, agents or attorneys of the financial institution engaged in complying with the reporting requirements of this chapter or to authorized employees of the department. Employees of the financial institution may use the information only as required in performing their duties and may not otherwise copy, reproduce, retain, or store any information except as instructed in writing by the commissioner. Any electronic media files or other information acquired by the financial institutions from the commissioner will remain the property of the department and must be returned to the commissioner at the time the information reports are due, or at any other time designated by the commissioner.

(7) The department and the financial institution shall not be liable for any applicable early withdrawal penalties and/or any nonsufficient funds (NSF) fees on the obligor's account(s).

(8) Notwithstanding any other law or rule to the contrary, the financial institution participating in the data match system may recover the costs associated with responding to a levy served upon it from the account of the depositor, per contractual agreement, and shall deduct this amount from the account of the depositor prior to transfer to the department.

(9) To support a data match, the department may disclose certain information relating to taxpayers against whom the department has filed a lien. The information includes the name and address of the taxpayer, the amount of the lien, and the person's identification numbers, including the social security number and/or the Employers Identification Number (EIN).

(10) The department may use the information received from a financial institution under this chapter only for the purpose of enforcing the collection of taxes, fees, penalties and/or interest administered by the department. The department shall keep all information received from the financial institutions pursuant to this chapter confidential, and any employee, agent, or representative of the department is prohibited from disclosing that information to any other third party.

HISTORY: Laws, 2017, ch. 407, § 3, eff from and after July 1, 2017.

TITLE 87.

CONTRACTS AND CONTRACTUAL RELATIONS

Chapter 3. Power and Letters of Attorney. 87-3-1
Chapter 7. Improvements to Real Property. 87-7-1

CHAPTER 3.

POWER AND LETTERS OF ATTORNEY

In General. 87-3-1
Uniform Durable Power of Attorney Act. 87-3-101

IN GENERAL

Sec.
87-3-7. Special form not required; gifts given under a power of attorney.

§ 87-3-7. Special form not required; gifts given under a power of attorney.

(1) A letter of attorney to transact any business need only express plainly the authority conferred.

(2) If any power of attorney or other writing (a) authorizes an attorney-in-fact or other agent to do, execute or perform any act that the principal might or could do, or (b) evidences the principal's intent to give the attorney-in-fact or agent full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact or agent shall have the power and authority to make gifts in any amount of any of the principal's property to any individuals or to any organizations described in Sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts, including the authority to exercise all rights and powers granted to a fiduciary under the Revised Uniform Fiduciary Access to Digital Assets Act created under Chapter 23, Title 91.

(3) Subsection (2) as set forth above is declaratory of past and present law in the State of Mississippi, and shall be applied to all powers of attorney, whether executed before, on or after March 16, 1999.

HISTORY: Codes, 1880, § 1186; 1892, § 201; 1906, § 207; Hemingway's 1917, § 2901; 1930, § 2956; 1942, § 252; Laws, 1999, ch. 405, § 1; Laws, 2017, ch. 419, § 19, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added "including the authority to exercise...Chapter 23, Title 91" at the end of (2).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Arbitration agreements.
3. Violation.

1. In general.

When an attorney-in-fact is prohibited from giving himself gifts from the principal's property, extrinsic evidence of the principal's intent to allow such gifts is not admissible, and while nothing prohibits a principal from expressly authorizing such gifts in writing, the attorney-in-fact cannot rely on an alleged oral authorization where the power of attorney itself expressly prohibits such gifts; the decedent's alleged oral statements to her relative could not negate the express terms of her power of attorney that prohibited the relative from recognizing any personal gain, and any such transaction was void ab initio. Swank v. Covington (In re Estate of Hemphill), 186 So. 3d 920, 2016 Miss. App. LEXIS 60 (Miss. Ct. App. 2016).

2. Arbitration agreements.

Where a son signed an arbitration agreement on the son's mother's behalf when the mother was admitted to a nursing home, the son brought a wrongful death action against defendants, and defendants sought to compel arbitration, the son lacked actual authority to sign the arbitration agreement on the mother's behalf because no power of attorney was executed, and the Mississippi Supreme Court would regard the informal proof of authority in this case to be clearly insufficient to establish an express agency under Mississippi law. Gross v. GGNSC Southaven, LLC, 83 F. Supp. 3d 691, 2015 U.S. Dist. LEXIS 14071 (N.D. Miss. 2015), vacated, 817 F.3d 169, 2016 U.S. App. LEXIS 4749 (5th Cir. Miss. 2016).

3. Violation.

Constructive trust was properly imposed on funds a daughter obtained from her deceased father's accounts as the father's attorney-in-fact because there was no history of the father making such gifts. Kilpatrick v. Jarvis (in re Estate of Jarvis), — So. 3d —, 2017 Miss. App. LEXIS 378 (Miss. Ct. App. June 27, 2017).

Relative violated the power of attorney (POA) by making herself a joint owner of certain funds, and she personally benefitted from another transaction, and thus the estate was entitled to recover these certificate of deposit; however, as to another, the decedent had made the relative an owner of the account, and thus the relative did not personally gain from purchasing the new certificate of deposit and she only merely moved funds, and thus the funds attributable to those certificates of deposit were not tainted by any violation of the POA. Swank v. Covington (In re Estate of Hemphill), 186 So. 3d 920, 2016 Miss. App. LEXIS 60 (Miss. Ct. App. 2016).

UNIFORM DURABLE POWER OF ATTORNEY ACT

Sec.
87-3-109. Relation of attorney in fact to court-appointed fiduciary.

§ 87-3-109. Relation of attorney in fact to court-appointed fiduciary.

(1) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power

to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated.

(2) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(3) Any person acting in a fiduciary capacity shall exercise all rights and powers granted to a fiduciary under the Revised Uniform Fiduciary Access to Digital Assets Act created under Chapter 23, Title 91.

HISTORY: Laws, 1994, ch. 336, § 3; Laws, 2017, ch. 419, § 22, eff from and after July 1, 2017.

Amendment Notes — The 2017 amendment added (3).

CHAPTER 7.

IMPROVEMENTS TO REAL PROPERTY

Sec.

87-7-7. Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

87-7-9. Contracts, subcontracts or purchase orders with provisions relating to real property improvement that make the contract subject to laws of another state or restrict forum for litigation, arbitration or dispute resolution to another state are void; applicability.

§ 87-7-3. Payment of contractors; penalty for late payment.

JUDICIAL DECISIONS

ANALYSIS

2. Prejudgment interest not available.
4. Liquidated damages requirement.

2. Prejudgment interest not available.

Award of prejudgment interest under Miss. Code Ann. § 75-17-1 in a contractor's claim was error because the principal amount was not fixed before judgment and was unliquidated; the amount of claim was clearly in dispute, there was no finding that the owners disputed the amount owed in bad faith, and the trial court resorted to quantum meruit to fix the exact amount of damages. The same considerations which precluded a recovery of prejudgment interest for unliquidated amounts owed under § 75-17-1 applied to Miss. Code Ann. § 87-7-3. Falkner v. Stubbs, 2013 Miss. LEXIS 65 (Miss. Mar. 7, 2013), op. withdrawn, 2013 Miss. LEXIS 431 (Miss. Aug. 22, 2013).

4. Liquidated damages requirement.

Where appellee's recovery was based on an oral contract, he was not entitled to prejudgment interest because there was a bona fide dispute as to the amount of damages, and prejudgment interest was unavailable under Miss. Code Ann. §§ 75-17-1 or 87-7-3 where the damages were unliquidated. Falkner v. Stubbs, 121 So. 3d 899, 2013 Miss. LEXIS 428 (Miss. 2013).

§ 87-7-7. Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

(1) A contractor who undertakes to negotiate a draft made payable to the contractor and any other party must first obtain an endorsement or other written signed authorization of every co-payee on the draft if the draft is tendered in payment for materials or equipment furnished or labor performed by the owner, laborer, supplier or equipment dealer.

(2) A contractor who negotiates a draft without first obtaining an endorsement or other written signed authorization required under this section is guilty of a misdemeanor and shall be subject to a fine not to exceed Five Hundred Dollars ($500.00) per violation, and shall also be ordered by the court to make full restitution to the owner, laborer, supplier or equipment dealer who is entitled to payment from the proceeds of the draft, as well as reasonable attorney's fees incurred by any party to whom restitution is ordered.

HISTORY: Laws, 2012, ch. 506, § 1, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 87-7-9. Contracts, subcontracts or purchase orders with provisions relating to real property improvement that make the contract subject to laws of another state or restrict forum for litigation, arbitration or dispute resolution to another state are void; applicability.

(1) A provision in any contract, subcontract, or purchase order for the improvement of real property in this state, or to provide materials therefor, is void and against public policy if it makes the contract, subcontract, or purchase order subject to the laws of another state, or provides that the exclusive forum for any litigation, arbitration, or other dispute resolution process be located in another state.

(2) The provisions of this section apply only to contracts, agreements and purchase orders:

(a) Entered into on or after July 1, 2018;

(b) Only if at least one (1) of the parties is a Mississippi resident; and

(c) Only if entered into between any two (2) or more of the following persons and no others: the owner of the real property improved or to be improved, a contractor, subcontractor, materialman or design professional. As used in this section, "contractor", "subcontractor", "materialman" and "design professional" shall have the meanings ascribed in Section 85-7-401.

(3) For purposes of this section, "Mississippi resident" means any natural person domiciled in Mississippi or any business entity having a principal place of business in Mississippi.

HISTORY: Laws, 2018, ch. 455, § 1, eff from and after July 1, 2018.

TITLE 89.

REAL AND PERSONAL PROPERTY

Chapter 1.	Land and Conveyances.	89-1-1
Chapter 3.	Acknowledgments.	89-3-1
Chapter 5.	Recording of Instruments.	89-5-1
Chapter 7.	Landlord and Tenant.	89-7-1
Chapter 8.	Residential Landlord and Tenant Act.	89-8-1
Chapter 12.	Uniform Disposition of Unclaimed Property Act.	89-12-1
Chapter 21.	Uniform Disclaimer of Property Interests Act [Repealed].	89-21-1
Chapter 22.	Mississippi Uniform Disclaimer of Property Interests Act (2002/2010).	89-22-1
Chapter 25.	Mississippi Uniform Statutory Rule Against Perpetuities.	89-25-1

CHAPTER 1.

LAND AND CONVEYANCES

In General. 89-1-1

IN GENERAL

Sec.

89-1-69. Prohibition against covenants requiring payment of a fee upon the transfer of real property; exception.

§ 89-1-1. Land conveyed to vest immediately or in future.

JUDICIAL DECISIONS

8. Vesting of title in grantee—generally.

Quitclaim deed to 80 acres of farmland in Mississippi which an Alabama corporation claimed it received from a real estate investment company ("debtor") before the debtor declared bankruptcy was invalidunder Miss. Code Ann. § 89-1-1 because it was not signed by an individual who had the power to represent the debtor, and even if the deed was somehow valid, a trustee who was appointed to administer the debtor's Chapter 7 bankruptcy case had the power under 11 U.S.C.S. § 544 to avoid the deed because the deed was not recorded before the debtor declared bankruptcy. Smith v. Dynasty Grp., Inc. (In re Heritage Real Estate Inv., Inc), — B.R. —, 2017 Bankr. LEXIS 3618 (Bankr. S.D. Miss. Oct. 17, 2017), aff'd, — F. Supp. 3d —, 2018 U.S. Dist. LEXIS 229036 (S.D. Miss. 2018).

Earlier instrument sufficed to transfer the father's partnership interest in the subject property to the son where the instrument had been signed, sealed, and delivered, it evinced the father's intent to transfer title to all partnership property to the son, and the property had been purchased and treated as partnership property. White v. White (In re White), 234 So. 3d 1210, 2017 Miss. LEXIS 351 (Miss. 2017).

§ 89-1-7. Estate in two or more persons.

JUDICIAL DECISIONS

ANALYSIS

3. Joint tenancy.
4. Tenancy by entirety.

3. Joint tenancy.

Award of the entire purchase price of a home to one of the unmarried joint tenants (JT1) was appropriate. Joint tenants were allowed to seek partition of a property under Miss. Code Ann. § 11-21-3 partition, the chancellor could adjust the equities and determine the claims of the joint tenants under Miss. Code Ann. § 11-21-9, and JT1 had paid the entire purchase price for the home along with the cost of all utilities, insurance, club dues, and taxes while JT2 had paid nothing. Jones v. Graphia, 95 So. 3d 751, 2012 Miss. App. LEXIS 493 (Miss. Ct. App. 2012).

4. Tenancy by entirety.

Because the debtors owned their homestead as tenants by the entirety, any nonexempt equity in the debtors' homestead could be administered only to the extent of the joint claims against the debtors. In re Pace, 521 B.R. 124, 2014 Bankr. LEXIS 4341 (Bankr. N.D. Miss. 2014).

Plaintiffs contended and defendant agreed that because defendant failed to have both plaintiffs, as tenants by the entirety, execute the construction contract, the lien did not attach to the property as a means of securing the debt owed only by one plaintiff to defendant, but the other plaintiff's alleged knowledge and consent to work being done on property she owned might amount to authorization, regardless of whether or not she was a signatory to the contract, and summary judgment was inappropriate at this stage. Ward v. McCammon (In re Ward), 2014 Bankr. LEXIS 1200 (Bankr. N.D. Miss. Mar. 28, 2014).

Property was held by plaintiffs as tenants by the entirety, and by virtue of each spouse possessing an undivided interest in the entire estate, the property was not subject to unilateral action of less than all the owners. Ward v. McCammon (In re Ward), 2014 Bankr. LEXIS 1200 (Bankr. N.D. Miss. Mar. 28, 2014).

Chapter 13 debtor who owned real property with her husband as a tenant by the entireties, which she claimed as her homestead, was allowed under 11 U.S.C.S. § 522(b)(3)(B) to exempt the full value of the property from unsecured creditors' claims for debts she incurred separately, when her husband did not join her in filing bankruptcy. Mississippi was a common law state, the common law of Mississippi constituted "applicable nonbankruptcy law" under § 522(b)(3)(B), and her homestead was exempt under Mississippi law from any process which could arise from the claims at issue. In re Dixon, 2011 Bankr. LEXIS 5680 (Bankr. S.D. Miss. Mar. 31, 2011).

§ 89-1-29. Spouse's role in conveying homestead; incompetent spouse; limited power of attorney in conveyance of homestead.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
4. Validity of conveyances in general.
7. —Miscellaneous.
8. Validity of incumbrances in general.

1. In general.

Court is unwilling to read the statute to require that both spouses sign a home-

stead application in order for it to be effective. Dixon v. Jones (In re Will of Jones), 138 So. 3d 205, 2014 Miss. App. LEXIS 230 (Miss. Ct. App. 2014).

4. Validity of conveyances in general.

Statutory signature requirement cannot be waived; by statute, the quitclaim deed attempting to convey the home without the wife's signature was invalid. Dixon v. Jones (In re Will of Jones), 138 So. 3d 205, 2014 Miss. App. LEXIS 230 (Miss. Ct. App. 2014).

7. —Miscellaneous.

While it may have been the testator's intent to quitclaim the home to himself and his daughter, and to her alone after his death, he did not legally do so, as the quitclaim deed was signed solely by the testator, who was married, and this was not sufficient under the law. Dixon v. Jones (In re Will of Jones), 138 So. 3d 205, 2014 Miss. App. LEXIS 230 (Miss. Ct. App. 2014).

8. Validity of incumbrances in general.

In light of its dicta finding much force in the argument that the statute does not require a joint deed of husband and wife, the Mississippi Supreme Court would likely hold that a valid deed of trust was created when spouses contemporaneously signed separate but identical deeds of trust to their homestead because the parties clearly intended to create a valid deed of trust as part of one global transaction. Avakian v. Citibank, N.A., 773 F.3d 647, 2014 U.S. App. LEXIS 23159 (5th Cir. Miss. 2014).

Construing spouses' separately signed deeds of trust to their homestead together comports with the basic purpose of protecting the spouses because the deeds of trust provide a clear written record of the couples' contemporaneous consent to the creation of a deed of trust. Avakian v. Citibank, N.A., 773 F.3d 647, 2014 U.S. App. LEXIS 23159 (5th Cir. Miss. 2014).

RESEARCH REFERENCES

ALR.

Homestead Right of Cotenant as Affecting Partition. 83 A.L.R.6th 605.

§ 89-1-33. Effect of word "warrant" in conveyance.

JUDICIAL DECISIONS

1. In general.

In a case in which the father conveyed land by warranty deed to his daughter, reserving unto himself a life estate, but he attempted to reconvey one acre of the same tract to another person later, the chancellor correctly found that the father had reserved a life estate and that he could have conveyed his reserved life estate, but that reading the conveyance as retaining the right to reconvey title in fee simple was repugnant to the granting clause in the conveyance to his daughter as the father conveyed and warranted the property to his daughter; pursuant to the deed, the daughter acquired ownership of the property upon delivery of the deed; and the father could not subsequently convey to another person property he no longer owned. T&W Homes Etc, LLC v. Crotwell, 235 So. 3d 66, 2017 Miss. LEXIS 338 (Miss. 2017).

§ 89-1-39. Effect of quitclaim and release.

JUDICIAL DECISIONS

2. Miscellaneous.

Judgment on the pleadings in favor of an assignee was proper because there was no set of facts that a mortgagor could

prove that would entitle him to the surplus that resulted from a foreclosure sale since his conveyances divested him of any interests or rights referenced in the deed of trust; the quitclaim deed and prior conveyances divested the mortgagee of his rights and interests in the property because he manifested his intent to transfer all his right, title, and interest in the property. Hinton v. Rolison, 175 So. 3d 1281, 2015 Miss. LEXIS 519 (Miss. 2015).

§ 89-1-43. Mortgages and trust estates; trust estates subject to execution.

JUDICIAL DECISIONS

2. Assignment.

Judgment on the pleadings in favor of an assignee was proper because there was no set of facts that a mortgagor could prove that would entitle him to the surplus that resulted from a foreclosure sale since his conveyances divested him of any interests or rights referenced in the deed of trust; the quitclaim deed and prior conveyances divested the mortgagee of his rights and interests in the property because he manifested his intent to transfer all his right, title, and interest in the property. Hinton v. Rolison, 175 So. 3d 1281, 2015 Miss. LEXIS 519 (Miss. 2015).

§ 89-1-45. Mortgage for purchase money of land.

JUDICIAL DECISIONS

1. Reformation of deed.

Chancery court properly granted a bank summary judgment in its action for a declaratory judgment and reformation of its deed of trust to correspond with the corrected description contained in a grantee's deed and thus, allow it to proceed with foreclosure, because due to a scrivener's error, the deed and deed of trust listed the wrong section and county. Williams v. US Bank Trust, N.A., 239 So. 3d 540, 2017 Miss. App. LEXIS 657 (Miss. Ct. App. 2017).

§ 89-1-49. Extinguishment of mortgage; applicability; line of credit.

JUDICIAL DECISIONS

1. In general.

Bank's mortgage lien against residential property did not have priority over a prior recorded deed of trust against the same property securing a line of credit, since the bank's payment of the outstanding balance on the line of credit did not cancel the line of credit or the deed of trust, and the deed of trust remained in effect when the term of the line of credit was renewed by agreement. U.S. Bank N.A. v. State Bank & Trust Co., 45 F. Supp. 3d 582, 2014 U.S. Dist. LEXIS 95934 (S.D. Miss. 2014).

§ 89-1-53. Mortgages and deeds of trust on land; to be referred to in deed of conveyance under foreclosure proceedings.

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

RESEARCH REFERENCES

ALR.

Necessity of Production of Original Note Involved in Mortgage Foreclosure – Twenty-First Century Cases. 86 A.L.R.6th 411.

§ 89-1-55. How lands sold under mortgages and deeds in trust.

Cross References — For additional notice requirements in mortgage foreclosure procedures that apply to mortgage broker licensees under Section 81-18-i et seq., see § 81-18-55.

JUDICIAL DECISIONS

6. Notice of sale, in general.

Circuit court properly granted summary judgment to a purchaser at a foreclosure sale and dismissed from the borrower's suit pursuant to the bona fide purchaser defense because the trustee properly followed the statutory posting and publishing requirements, the borrower failed raise a genuine issue for trial where she did not show that notice was not given, that the foreclosure and subsequent sale were wrongful, or to context the purchaser's sworn affidavit stating that he purchased the property for valuable consideration without notice of her alleged claims. Blanchard v. Mize, 186 So. 3d 403, 2016 Miss. App. LEXIS 77 (Miss. Ct. App. 2016).

9. —Description of land.

There was no valid sale of a property because the published legal description for the notice of sale did not include the property in question. Accordingly, the circuit court erred in awarding a deficiency judgment in that, because the property had not yet been sold at foreclosure, there was no deficiency. Dorman v. Trustmark Nat'l Bank, 281 So. 3d 1016, 2019 Miss. App. LEXIS 198 (Miss. Ct. App. 2019).

RESEARCH REFERENCES

ALR.

Necessity of Production of Original Note Involved in Mortgage Foreclosure – Twenty-First Century Cases. 86 A.L.R.6th 411.

§ 89-1-57. Deed of trust or mortgage; how sale made when terms not specified.

JUDICIAL DECISIONS

2. Notice.

Notice of a foreclosure sale was not invalid for incorrectly describing the door of the courthouse where the sale would take place since a potential bidder would have been able to find the sale from the advertised description. Palmer v. Hope Enters. (In re Palmer), — B.R. —, 2017 Bankr. LEXIS 1481 (Bankr. S.D. Miss. May 30, 2017).

§ 89-1-59. Accelerated debt may be reinstated by payment of all default before sale.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
3. Standing.
4. Evidence.
5. Caveat emptor.

1. In general.

Bankruptcy courts have recognized that there are essential differences between a contractual mortgage reinstatement and the statutory cure right afforded by 11 U.S.C.S. § 1322(b)(5) of the Bankruptcy Code; regardless, it was undisputed that debtor never cured the default that precipitated acceleration of the Note and, therefore, never had the statutory right to reinstate the Note. Seaberry v. Cenlar FSB (In re Seaberry), — B.R. —, 2019 Bankr. LEXIS 1189 (Bankr. S.D. Miss. Apr. 12, 2019).

3. Standing.

In a case in which plaintiff alleged that defendants failed and refused to tender to plaintiff a trustee's deed to the subject property and further failed and refused to deliver possession of the subject property to plaintiff, plaintiff had standing to challenge the debtor's alleged failure to cure the default under Miss. Code Ann. § 89-1-59. Hobson v. Chase Home Fin., LLC, 179 So. 3d 1026, 2015 Miss. LEXIS 584 (Miss. 2015).

4. Evidence.

In a case in which plaintiff alleged that defendants failed and refused to tender to plaintiff a trustee's deed to the subject property and further failed and refused to deliver possession of the subject property to plaintiff, summary judgment was rightly granted in favor of defendants because sufficient evidence was presented to the circuit court that defendants had complied with the statutory requirements under Miss. Code Ann. § 89-1-59 in reinstating the delinquent debtor's loan. Hobson v. Chase Home Fin., LLC, 179 So. 3d 1026, 2015 Miss. LEXIS 584 (Miss. 2015).

5. Caveat emptor.

In a case in which plaintiff alleged that defendants failed and refused to tender to plaintiff a trustee's deed to the subject property and further failed and refused to deliver possession of the subject property to plaintiff, the doctrine of caveat emptor barred plaintiff's claims. Hobson v. Chase Home Fin., LLC, 179 So. 3d 1026, 2015 Miss. LEXIS 584 (Miss. 2015).

§ 89-1-69. Prohibition against covenants requiring payment of a fee upon the transfer of real property; exception.

(1) In this section, "property owners' association" means an incorporated or unincorporated association that:

(a) Is designated as the representative of the owners of property in a subdivision;

(b) Has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the subdivision; and

(c) Manages or regulates the subdivision for the benefit of the owners of property in the subdivision.

(2) A deed restriction or other covenant running with the land applicable to the conveyance of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns to pay a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property a fee in connection with a future transfer of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable. For purposes of this section, a conveyance of real property includes a conveyance or other transfer of an interest or estate in real property.

(3) This section does not apply to a deed restriction or other covenant running with the land that requires a fee associated with the conveyance of property in a subdivision that is payable to:

(a) A property owners' association that manages or regulates the subdivision or the association's managing agent if the subdivision contains more than one (1) platted lot and the right to collect a fee in connection with a future transfer of the property is evidenced by a deed restriction or covenant running with the land filed in the public land records;

(b) An entity organized under Section 501(c)(3), Internal Revenue Code of 1986 if the entity has a right to collect a fee in connection with a future transfer of the property evidenced by a deed restriction or covenant running with the land filed in the public land records; or

(c) A governmental entity.

HISTORY: Laws, 2010, ch. 348, § 1; Laws, 2011, ch. 344, § 1, eff from and after July 1, 2011; Laws, 2019, ch. 330, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (3), added "and the right to collect a fee...land filed in the public land records" at the end of (a), and inserted "if the entity has a right...land filed in the public land records" in (b).

RELIEF FROM INEQUITABLE MORTGAGE FORECLOSURES, EXECUTION SALES AND THE LIKE AFTER DECLARED EMERGENCY OR DISASTER

§ 89-1-301. Preliminary injunction against foreclosure proceedings; application to dissolve.

RESEARCH REFERENCES

ALR.

Recognition of Action for Damages for Wrongful Foreclosure — Types of Actions. 82 A.L.R.6th 43.

Validity, Construction, and Application of State Debt Adjusting Statutes. 90 A.L.R.6th 1.

REAL ESTATE TRANSFER DISCLOSURE REQUIREMENTS

§ 89-1-501. Applicability of real estate transfer disclosure requirement provisions.

JUDICIAL DECISIONS

1. Illustrative cases.

Sellers failed to comply with requirements concerning disclosures by failing to disclose the known repair history or providing responses to the relevant questions on the disclosure form; the presence of an "as-is" clause did not absolve the sellers of their duty to disclose. The sellers were fully aware that the subject parapet wall had issues because they had paid a contractor to repair numerous problems prior to the sale of the home to the buyers, and because of the sellers' failure to disclose, the buyers were damaged. Lewis v. Rula, 293 So. 3d 317, 2020 Miss. App. LEXIS 86 (Miss. Ct. App. 2020).

While Mississippi requires a disclosure statement to accompany the sale of a domicile or house, transfers of real property on which no dwelling is located do not require disclosure statements to be provided to the buyer. Stribling Invs., LLC v. Mike Rozier Constr. Co., 189 So. 3d 1216, 2016 Miss. LEXIS 19 (Miss. 2016).

CHAPTER 3.
ACKNOWLEDGMENTS

Sec.

89-3-1. Acknowledgment or proof necessary to recording.
89-3-3. Acknowledgment and proof [Repealed effective July 1, 2021].
89-3-5. Acknowledgments before commissioned officers of United States armed forces [Repealed effective July 1, 2021].
89-3-7. Forms of acknowledgment.
89-3-9. Acknowledgment or proof in another state [Repealed effective July 1, 2021].
89-3-11. Acknowledgment or proof in another state; construction and application as to prior acknowledgments [Repealed effective July 1, 2021].
89-3-13. Acknowledgment or proof in foreign country [Repealed effective July 1, 2021].
89-3-15. Grantor and witness dead or absent, how proved [Repealed effective July 1, 2021].

§ 89-3-1. Acknowledgment or proof necessary to recording.

[Effective until July 1, 2021, this section will read:]

(1) Except in cases governed by the Uniform Commercial Code, the

provisions of Sections 89-5-101 through 89-5-113, or otherwise specially provided for by law, the execution of a written instrument of or concerning the sale of lands, whether the same be made for passing an estate of freehold or inheritance, or for a term of years, or for any other purpose, or any writing conveying personal estate, shall be acknowledged or proved, and the acknowledgment or proof duly certified by an officer competent to take the same in the manner directed by this chapter.

(2) Unless an instrument is acknowledged or proved as provided in subsection (1) of this section, the clerk's office may refuse to admit the instrument to record. However, if an instrument is not so acknowledged or proved but is otherwise admitted to record, then all persons shall be on constructive notice of the contents of the instrument.

(3) The provisions of subsection (2) of this section shall apply to all instruments of record on or after July 1, 2011. However, if the relative priorities of conflicting claims to real property were established before July 1, 2011, then the law applicable to those claims at the time those claims were established shall determine their priority.

[Effective from and after July 1, 2021, this section will read:]

(1) A document concerning real property or conveying personal property may not be recorded unless, in the case of a paper document, it contains an original signature or signatures, or in the case of an electronic document, contains an electronic signature or signatures that comply with the Uniform Real Property Electronic Recording Act (Article 3, Chapter 5, Title 89, Mississippi Code of 1972). For purposes of this section, the terms "document," "paper document" and "electronic document" have the meaning given in the Uniform Real Property Electronic Recording Act. A document concerning real property or conveying personal property which conforms to this subsection may be recorded if it is acknowledged or proved according to law, or in the case of a document that is an affidavit, verified upon oath or affirmation.

(2) The chancery clerk's office may refuse to record a document that does not satisfy subsection (1). However, if a document does not satisfy subsection (1), but is otherwise admitted to record, then all persons shall be on constructive notice of the contents of the document.

(3) If the relative priorities of conflicting claims to real property were established before July 1, 2011, then the law applicable to those claims at the time those claims were established shall determine their priority.

(4) This section does not require the acknowledgement or verification upon oath or affirmation or prohibit the recording of any of the following filed for record under the Uniform Commercial Code or otherwise specially provided for by law: (a) a financing statement; (b) a security agreement filed as a financing statement; or (c) a continuation statement.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (7); 1857, ch. 36, art. 25; 1871, § 2308; 1880, § 1215; 1892, § 2460; 1906, § 2793; Hemingway's 1917, § 2294; 1930, § 2135; 1942, § 856; Laws, 1966, ch. 316, § 10-105; Laws, 2011, ch. 364, § 8; Laws, 2011, ch. 538, § 2, eff from and after July 1, 2011; Laws, 2020, ch. 382, § 31, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment, effective July 1, 2021, rewrote (1), which read: "Except in cases governed by the Uniform Commercial Code, the provisions of Sections 89-5-101 through 89-5-113, or otherwise specially provided for by law, the execution of a written instrument of or concerning the sale of lands, whether the same be made for passing an estate of freehold or inheritance, or for a term of years, or for any other purpose, or any writing conveying personal estate, shall be acknowledged or proved, and the acknowledgment or proof duly certified by an officer competent to take the same in the manner directed by this chapter"; rewrote (2), which read: "Unless an instrument is acknowledged or proved as provided in subsection (1) of this section, the clerk's office may refuse to admit the instrument to record. However, if an instrument is not so acknowledged or proved but is otherwise admitted to record, then all persons shall be on constructive notice of the contents of the instrument"; in (3), deleted the former first sentence, which read: "The provisions of subsection (2) of this section shall apply to all instruments of record on or after July 1, 2011," deleted "However" from the beginning of the second sentence, and made a related change; and added (4).

JUDICIAL DECISIONS

1. In general.

Chancery court properly granted a decedent's former wife summary judgment in an executrix's action seeking to void deeds because the property-settlement agreement between the decedent and wife contemplated that the property would pass by survivorship; the conveyances of the wife's undivided one-half interest were void, and thus, the original joint tenancy with rights of survivorship was still intact at the decedent's death, and the wife was entitled to the entire property. O'Brien v. Westedt, 243 So. 3d 792, 2018 Miss. App. LEXIS 165 (Miss. Ct. App. 2018).

§ 89-3-3. Acknowledgment and proof [Repealed effective July 1, 2021].

Every conveyance, contract or agreement proper to be recorded, may be acknowledged or proved before any judge of a United States court, any judge of the supreme court, any judge of the circuit court, or any chancellor, or any judge of the county court, or before any clerk of a court of record or notary public, who shall certify such acknowledgment or proof under the seal of his office, or before any justice of the peace, or police justice, or mayor of any city, town, or village, or clerk of a municipality, or member of the board of supervisors, whether the property conveyed be within his county or not.

HISTORY: Codes, Hutchinson's 1848, ch. 42, arts. 1 (1), 5 (3), 6 (1); 1857, ch. 36, art. 28; 1871, § 2310; 1880, § 1217; 1892, § 2464; 1906, § 2798; Hemingway's 1917, § 2299; 1930, § 2136; 1942, § 857; Laws, 1988, ch. 347, § 2, eff from and after July 1, 1988.

Editor's Notes — Laws of 2020, ch. 382, § 36, effective July 1, 2021, provides:

"SECTION 36. Section 89-3-3, Mississippi Code of 1972, which provides for acknowledgment and proof necessary for recordation, is repealed."

§ 89-3-5. Acknowledgments before commissioned officers of United States armed forces [Repealed effective July 1, 2021].

In all cases where a conveyance, contract, agreement or other instrument

of writing has heretofore been acknowledged or proved before any commissioned officer in the services of the United States armed forces, such acknowledgment or affidavit is hereby declared to be good, valid and binding to the same extent and with like effect as though such conveyance, contract, agreement, or other instrument of writing had been acknowledged or proved before any officer authorized by law to take acknowledgments in the State of Mississippi.

HISTORY: Codes, 1942, § 857-01; Laws, 1946, ch. 285, § 1.

Editor's Notes — Laws of 2020, ch. 382, § 37, effective July 1, 2021, provides: "SECTION 37. Section 89-3-3, Mississippi Code of 1972, which provides for acknowledgments before commissioned officers of United States Armed Forces, is repealed."

§ 89-3-7. Forms of acknowledgment.

[Effective until July 1, 2021, this section will read:]

The following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate or personal property; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law:

(a) In the case of natural persons acting in their own right:
"STATE OF _____
COUNTY OF _____
Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20 _____, within my jurisdiction, the within named _____ , who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

(NOTARY PUBLIC)

My commission expires:
_____ "
(Affix official seal, if applicable)
(b) In the case of corporations:
"STATE OF _____
COUNTY OF _____
Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____ , 20 _____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is _____ of _____, a _____ corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

(NOTARY PUBLIC)

My commission expires:

_____ "

(Affix official seal, if applicable)

(c) In the case of a corporate general partner of a limited partnership:

"STATE OF _____

COUNTY OF_____

Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of_____, 20_____, within my jurisdiction, the within named_____, who acknowledged to me that (he) (she) is_____ of_____, a _____ corporation and general partner of_____, a_____ limited partnership, and that for and on behalf of said corporation as general partner of said limited partnership, and as the act and deed of said corporation as general partner of said limited partnership, and as the act and deed of said limited partnership, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited partnership so to do.

(NOTARY PUBLIC)

My commission expires:

_____ "

(Affix official seal, if applicable)

(d) In the case of a corporate member of a member-managed limited liability company:

"STATE OF _____

COUNTY OF_____

Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of _____, 20_____, within my jurisdiction, the within named _____, who acknowledged to me that (he) (she) is _____ of _____, a _____ corporation and member of _____, a _____ member-managed limited liability company, and that for and on behalf of said corporation as member of said limited liability company, and as the act and deed of said corporation as member of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

(NOTARY PUBLIC)

My commission expires:

_____ "

(Affix official seal, if applicable)

(e) In the case of a corporate manager of a manager-managed limited liability company:

"STATE OF _____

COUNTY OF_____

Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of_____, 20_____, within my jurisdiction, the within named_____, who acknowledged to me that (he)

(she) is_____ of_____, a _____ corporation and manager of_____, a_____ manager-managed limited liability company, and that for and on behalf of said corporation as manager of said limited liability company, and as the act and deed of said corporation as manager of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

(NOTARY PUBLIC)

My commission expires:
_____"

(Affix official seal, if applicable)

(f) In the case of persons acting in representative capacities:

"STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is _____ of _____ and that in said representative capacity (he) (she) executed the above and foregoing instrument, after first having been duly authorized so to do.

(NOTARY PUBLIC)

My commission expires:
_____"

(Affix official seal, if applicable)

(g) In the case of proof of execution of the instrument made by a subscribing witness:

"STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, CD, one of the subscribing witnesses to the above and foregoing instrument, who, being first duly sworn, states that (he) (she) saw the within (or above) named AB, whose name is subscribed thereto, sign and deliver the same to EF (or that (he) (she) heard AB acknowledge that (he) (she) signed and delivered the same to EF); and that the affiant subscribed (his) (her) name as witness thereto in the presence of AB.

_____ (CD)

(NOTARY PUBLIC)

My commission expires:
_____"

(Affix official seal, if applicable)

(h) In the case of any business organization, foreign or domestic:

"STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20 _____, within my jurisdiction, the within named _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the above and foregoing instrument and acknowledged that he/she/they executed the same in his/her/their representative capacity(ies), and that by his/her/their signature(s) on the instrument, and as the act and deed of the person(s) or entity(ies) upon behalf of which he/she/they acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

_____

(NOTARY PUBLIC)

My commission expires:
_____"

(Affix official seal, if applicable)

[Effective from and after July 1, 2021, this section will read:]

(1) The following long forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real or personal property; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law:

(a) In the case of natural persons acting in their own right:

"STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20 _____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"

(Affix official seal, if applicable)

(b) In the case of corporations:

"STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20 _____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is _____ of _____, a _____ corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and

foregoing instrument, after first having been duly authorized by said corporation so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

(c) In the case of a corporate general partner of a limited partnership:

"STATE OF _____
COUNTY OF _____
Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of_____, 20_____, within my jurisdiction, the within named_____, who acknowledged to me that (he) (she) is_____ of_____, a _____ corporation and general partner of_____, a_____ limited partnership, and that for and on behalf of said corporation as general partner of said limited partnership, and as the act and deed of said corporation as general partner of said limited partnership, and as the act and deed of said limited partnership, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited partnership so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

(d) In the case of a corporate member of a member-managed limited liability company:

"STATE OF _____
COUNTY OF _____
Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of _____, 20_____, within my jurisdiction, the within named _____, who acknowledged to me that (he) (she) is _____ of _____, a _____ corporation and member of _____, a _____ member-managed limited liability company, and that for and on behalf of said corporation as member of said limited liability company, and as the act and deed of said corporation as member of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

(e) In the case of a corporate manager of a manager-managed limited liability company:

"STATE OF _____
COUNTY OF _____
Personally appeared before me, the undersigned authority in and for the said county and state, on this_____ day of_____, 20_____, within my jurisdiction, the within named_____, who acknowledged to me that (he) (she) is_____ of_____, a _____ corporation and manager of_____, a_____ manager-managed limited liability company, and that for and on behalf of said corporation as manager of said limited liability company, and as the act and deed of said corporation as manager of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

(f) In the case of persons acting in representative capacities:

"STATE OF _____
COUNTY OF _____
Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of_____, 20_____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) is _____ of _____ and that in said representative capacity (he) (she) executed the above and foregoing instrument, after first having been duly authorized so to do.

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:

_____"

(Affix official seal, if applicable)

(g) In the case of proof of execution of the instrument made by a subscribing witness:

"STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20_____, within my jurisdiction, CD, one of the subscribing witnesses to the above and foregoing instrument, who, being first duly sworn, states that (he) (she) saw the within (or above) named AB, whose name is subscribed thereto, sign and deliver the same to EF (or that (he) (she) heard AB acknowledge that (he) (she) signed and delivered the same to EF); and that the affiant subscribed (his) (her) name as witness thereto in the presence of AB.

_____

(Signature of notarial officer)

_____

(Title of office)

My commission expires:

_____"

(Affix official seal, if applicable)

(h) In the case of any business organization, foreign or domestic:

"STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the said county and state, on this _____ day of _____, 20 _____, within my jurisdiction, the within named _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the above and foregoing instrument and acknowledged that he/she/they executed the same in his/her/their representative capacity(ies), and that by his/her/their signature(s) on the instrument, and as the act and deed of the person(s) or entity(ies) upon behalf of which he/she/they acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

_____

(Signature of notarial officer)

_____

(Title of office)

My commission expires:

_____"

(Affix official seal, if applicable)

(2) The following short form certificates of notarial acts are sufficient for the purposes indicated if the certificate complies with Section 25-34-31(1) and (2):

(a) For an acknowledgment in an individual capacity:

"STATE OF _____
COUNTY OF _____
This record was acknowledged before me on (date) by (name(s) of individual(s)).

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

(b) For an acknowledgment in a representative capacity:

"STATE OF _____
COUNTY OF _____
This record was acknowledged before me on (date) by (name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

(c) For a verification on oath or affirmation (jurat):

"STATE OF _____
COUNTY OF _____
Signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s) making statement).

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

(d) For witnessing or attesting a signature:

"STATE OF _____
COUNTY OF _____

Signed or attested before me on (date) by (name(s) of individual(s)).

_____
(Signature of notarial officer)

_____
(Title of office)

My commission expires:
_____"
(Affix official seal, if applicable)

HISTORY: Codes, 1892, § 2465; 1906, § 2799; Hemingway's 1917, § 2300; 1930, § 2137; 1942, § 858; Laws, 1988, ch. 475, § 1; Laws, 1992, ch. 354 § 1; Laws, 2000, ch. 446, § 1; Laws, 2011, ch. 538, § 1, eff from and after July 1, 2011; Laws, 2020, ch. 382, § 32, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment, effective July 1, 2021, in (1), in the introductory paragraph, inserted "long" near the beginning, and deleted "estate" following "instruments affecting real," and in (a) through (h), substituted "(Signature of notarial officer)" for "(NOTARY PUBLIC)," and added "(Title of office)"; and added (2).

§ 89-3-9. Acknowledgment or proof in another state [Repealed effective July 1, 2021].

If the party who shall execute any conveyance of lands or personal property situated in this state, or if the witnesses thereto reside or be in some other state, territory in the Union, the District of Columbia, or in any possession of the United States, or land over which the United States has sovereign power, then the acknowledgment or proof may be made before and certified by the chief justice of the United States, or an associate justice of the Supreme Court of the United States, or a circuit or district judge of the United States, or any other United States judge, or any judge or justice of the supreme or superior court of any such state, territory, District of Columbia, or possession of the United States, or land over which the United States has sovereign power, or any justice of the peace of such state, territory, District of Columbia, possession, or land over which the United States has sovereign power, whose official character shall be certified under the seal of some court of record in his country, parish or other named official jurisdiction, or before any commissioner residing in such state, territory, District of Columbia, possession, or land over which the United States has sovereign power, who may be appointed by the governor of this state to take acknowledgments and proof of conveyances, or any notary public or a clerk of a court of record having a seal of office in said state, territory, District of Columbia, possession, or land over which the United States has sovereign power, and shall be as good and effectual as if the certificate of acknowledgment or proof had been made by a competent officer in this state.

HISTORY: Codes, Hutchinson's 1848, ch. 42, arts. 1 (13), 6 (1); 1857, ch. 36, art. 29; 1871, § 2312; 1880, § 1219; 1892, § 2466; 1906, § 2800; Hemingway's 1917, § 2301; 1930, § 2138; 1942, § 859; Laws, 1948, ch. 227, § 1.

Editor's Notes — Laws of 2020, ch. 382, § 38, effective July 1, 2021, provides: "SECTION 38. Section 89-3-9, Mississippi Code of 1972, which provides for foreign acknowledgments, is repealed."

§ 89-3-11. Acknowledgment or proof in another state; construction and application as to prior acknowledgments [Repealed effective July 1, 2021].

In the construction of this section and Section 89-3-9, the adoption of such sections shall not be construed as meaning that the word "territory" as used in Section 89-3-9 did not include prior to the adoption of these sections the possessions of the United States, or land over which the United States has sovereign power. And any acknowledgment heretofore taken in any possession of the United States, or any land over which the United States has sovereign power, by any of the officials thereof named above in Section 89-3-9 shall be as good and effectual as if made after the adoption of these sections.

HISTORY: Codes, 1942, § 859.5; Laws, 1948, ch. 227, § 2.

Editor's Notes — Laws of 2020, ch. 382, § 39, effective July 1, 2021, provides: "SECTION 39. Section 89-3-11, Mississippi Code of 1972, which clarifies the construction of certain foreign acknowledgments, is repealed."

§ 89-3-13. Acknowledgment or proof in foreign country [Repealed effective July 1, 2021].

If the party who shall execute any conveyance of lands or personal property situated in this state, or if the witnesses thereto, reside or be in a foreign country, the acknowledgment or proof of the execution of such conveyance may be made before any court of record, or the mayor or chief magistrate of any city, borough, or corporation of such foreign country in which the party or witness resides or may be; or before any commissioner residing in such country who may be appointed by the Governor, or before any ambassador, foreign minister, secretary of legation, or consul of the United States to the foreign country in which the party or witness may reside or be; or before any notary public commissioned by the government of the foreign country or any other person authorized by said government to take oaths or acknowledgments; but the certificate shall show that the party, or the party and witness, were identified before the officer, and that the party acknowledged the execution of the instrument, or that the execution was duly proved by the witness, and it shall be as good and effectual as if made and certified by a competent officer of this state.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (14); 1857, ch. 36, art. 30; 1871, § 2313; 1880, § 1220; 1892, § 2467; 1906, § 2801; Hemingway's 1917, § 2302; 1930, § 2139; 1942, § 860; Laws, 1988, ch. 399, eff from and after July 1, 1988.

Editor's Notes — Laws of 2020, ch. 382, § 40, effective July 1, 2021, provides: "SECTION 40. Section 89-3-13, Mississippi Code of 1972, which provides for acknowledgments or proof made in a foreign country, is repealed."

§ 89-3-15. Grantor and witness dead or absent, how proved [Repealed effective July 1, 2021].

If the grantor and witness or witnesses of any instrument of writing be dead or absent, so that the personal attendance of neither can be had, it may be established by the oath of any person who, on examination before an officer competent to take acknowledgments, can prove the handwriting of the deceased or absent witness or witnesses; or when such proof cannot be had, then the handwriting of the grantor may be proved, and the officer before whom such proof is made shall certify accordingly, and such certificate shall be deemed equivalent to an acknowledgment by the grantor or proof by a subscribing witness, and entitle the instrument to be recorded.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (16); 1857, ch. 36, art. 31; 1871, § 2314; 1880, § 1221; 1892, § 2468; 1906, § 2802; Hemingway's 1917, § 2303; 1930, § 2140; 1942, § 861.

Editor's Notes — Laws of 2020, ch. 382, § 41, effective July 1, 2021, provides: "SECTION 41. Section 89-3-15, Mississippi Code of 1972, which provides for proof in the absence of any grantor or witness, is repealed."

CHAPTER 5.

RECORDING OF INSTRUMENTS

Article 1. General Provisions. 89-5-1

ARTICLE 1.

GENERAL PROVISIONS.

Sec.
89-5-3. Conveyances, mortgages; void if not lodged for record.
89-5-8. Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.
89-5-24. Form of certain documents or instruments presented for recording; contents; exempt documents or instruments; additional recording fee for nonconforming documents or instruments.

§ 89-5-3. Conveyances, mortgages; void if not lodged for record.

Except as provided by Sections 89-5-101 through 89-5-113, all bargains and sales, and all other conveyances whatsoever of lands, whether made for passing an estate of freehold or inheritance, or for a term of years; and all instruments of settlement upon marriage wherein land, money, or other personalty should be settled or covenanted to be left or paid at the death of the party, or otherwise; and all deeds of trust and mortgages whatsoever, shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they be acknowledged or proved and lodged with the

clerk of the chancery court of the proper county, to be recorded in the same manner that other conveyances are required to be acknowledged or proved and recorded. Failure to file such instrument with the clerk for record shall prevent any claim of priority by the holder of such instrument over any similar recorded instrument affecting the same property, to the end that with reference to all instruments which may be filed for record under this section, the priority thereof shall be governed by the priority in time of the filing of the several instruments, in the absence of actual notice. But as between the parties and their heirs, and as to all subsequent purchasers with notice or without valuable consideration, said instruments shall nevertheless be valid and binding.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (2), (3); 1857, ch. 36, arts. 20, 21; 1871, §§ 2303, 2306; 1880, §§ 1211, 1212; 1892, §§ 2456, 2457; 1906, §§ 2786, 2787; Hemingway's 1917, §§ 2290, 2291; 1930, §§ 2143, 2147; 1942, §§ 864, 868; Laws, 1924, ch. 239; Laws, 2011, ch. 364, § 10, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence by substituting "wherein land, money, or other personalty should be settled..." for "wherein land, money, or other personality should be settled...". The Joint Committee ratified the correction at its August 1, 2013, meeting.

JUDICIAL DECISIONS

ANALYSIS

3. Record of void instrument.
4. Effect of failure to record or delay in recording.
5. Miscellaneous.

3. Record of void instrument.

Warranty deed which was filed in the wrong judicial district was void as to a utility because the utility acquired its interest to the subject real property in a quick-take condemnation action without notice of the misfiled deed. Harrison County Util. Auth. v. Walker, 143 So. 3d 608, 2014 Miss. App. LEXIS 19 (Miss. Ct. App.), cert. denied, 141 So. 3d 947, 2014 Miss. LEXIS 386 (Miss. 2014).

4. Effect of failure to record or delay in recording.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decdent's death. Kelly v. Roby (In re Estate of Roby), 84 So. 3d 786, 2011 Miss. App. LEXIS 405 (Miss. Ct. App. 2011).

5. Miscellaneous.

Appellate and chancery courts erred by finding that decedent never accepted reconveyance of six deeds from his sister, and therefore the six properties belonged to the decedent at the time of his death, because the evidence showed that the decedent took possession of the deeds after his sister reconveyed them to him, he paid taxes and insurance on the properties, made repairs and improvements on the properties, and collected rent on the properties. Green v. Cooley (In re Estate of Green), — So. 3d —, 2020 Miss. LEXIS 358 (Miss. Oct. 1, 2020).

Beneficiary deed of trust was not void because it identified the note, date of the note, and payment schedule, and thus, the

beneficiary could, with simple review, have been reasonably certain. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

If a landowner's spouse and adult child claimed an interest in a property which a utility sought to acquire in a quick-take condemnation action, their claim was against the landowner only because a warranty deed purporting to convey an interest in the subject property was misfiled in the wrong judicial district. Harrison County Util. Auth. v. Walker, 143 So. 3d 608, 2014 Miss. App. LEXIS 19 (Miss. Ct. App.), cert. denied, 141 So. 3d 947, 2014 Miss. LEXIS 386 (Miss. 2014).

§ 89-5-5. Priority of all instruments, and notice thereof controlled by date of filing for record; take effect, when.

JUDICIAL DECISIONS

ANALYSIS

3. Priority of recording.
7. Miscellaneous.

3. Priority of recording.

Bank's trust deed had priority over a subsequent note assignee's trust deed because the bank's deed was a renewal deed relating back to the bank's original deed. White v. Whitehead, 300 So. 3d 1078, 2020 Miss. App. LEXIS 430 (Miss. Ct. App. 2020).

Bank's mortgage lien against residential property did not have priority over a prior recorded deed of trust against the same property securing a line of credit, since the bank's payment of the outstanding balance on the line of credit did not cancel the line of credit or the deed of trust, and the deed of trust remained in effect when the term of the line of credit was renewed by agreement. U.S. Bank N.A. v. State Bank & Trust Co., 45 F. Supp. 3d 582, 2014 U.S. Dist. LEXIS 95934 (S.D. Miss. 2014).

Natural justice inexorably weighed against subrogation in favor of appellee because appellant was materially prejudiced by being placed secondary to a lien of a value and between two parties that it never agreed to be behind; when appellant recorded its deed of trust on the property appellee and all other interested parties were put on constructive notice of the existence of that deed of trust, and the failure to discover the deed of trust clearly constituted negligence. Cmty. Trust Bank of Miss. v. First Nat'l Bank of Clarksdale, 150 So. 3d 683, 2014 Miss. LEXIS 445 (Miss. 2014).

7. Miscellaneous.

Chancery court properly granted a lender's successor summary judgment in its action seeking a declaratory judgment that it held a first-priority deed of trust on real property because there was no genuine issue of material fact that the successor had actual knowledge of the defective deed of trust or a beneficiary's lien; the managing member of the settlement agent for the lender swore that the lender had no knowledge of any other deed of trust. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

To the extent one of a bank's deeds of trust was secondary to a lienholder's deed of trust by virtue of the filing date, equitable subrogation applied because the bank's loan was secured by a corresponding deed of trust for the same property, which was allowed to be pledged by the same person for the debt of a family member's company and the bank never cancelled its other deeds of trust. Pennington Group, LLC v. PriorityOne Bank, 228 So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

Chancery court properly found that the foreclosure a lienholder conducted was subject to the first priority lien position of a bank because the bank had a priority lien by virtue of its prior deeds of trust; it would be inequitable to hold that the bank lost its priority lien position to the lien-

holder, the wife and mother of the debtors to whom the bank showed favor by stopping its foreclosure proceedings and issuing another loan, a loan whose purpose was to refinance a business debt. Pennington Group, LLC v. PriorityOne Bank, 228 So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

Under Mississippi Recording Act, earlier recorded deed of trust (DOT) would have priority over subsequently recorded DOT unless a subordination provision in the first DOT altered this result or unless equitable subrogation applied, but this could not be determined on motion for summary judgment, as there were disputed issues of material fact. Good Hope Constr., Inc. v. RJB Financing, LLC (In re Grand Soleil-Natchez, LLC), 2013 Bankr. LEXIS 5645 (Bankr. S.D. Miss. Aug. 13, 2013).

§ 89-5-7. Written contracts in relation to land recordable.

JUDICIAL DECISIONS

1. In general.

Natural justice inexorably weighed against subrogation in favor of appellee because appellant was materially prejudiced by being placed secondary to a lien of a value and between two parties that it never agreed to be behind; when appellant recorded its deed of trust on the property appellee and all other interested parties were put on constructive notice of the existence of that deed of trust, and the failure to discover the deed of trust clearly constituted negligence. Cmty. Trust Bank of Miss. v. First Nat'l Bank of Clarksdale, 150 So. 3d 683, 2014 Miss. LEXIS 445 (Miss. 2014).

§ 89-5-8. Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.

[Effective until July 1, 2021, this section will read:]

(1) Any affidavit relating to the identification, the marital status, the heirship, the relation, the death, or the time of death, of any person who is a party to any instrument affecting the title to real estate, or any affidavit relating to the identification of any corporation or other legal entity which is a party to any instrument affecting the title to real estate, duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated.

(2)(a) Notice of a typographical or other minor error in an instrument affecting the title to real estate may be given by recording an affidavit of scrivener's error. If an affidavit is conspicuously identified as an affidavit of scrivener's error, the chancery clerk shall index the affidavit in the general index under the names of the original parties to the instrument if they are identified in the affidavit, and in the sectional index as provided in the indexing instructions of the affidavit. Notice of the corrective information provided by the affiant is effective upon recordation. An affidavit under this paragraph (a) may be prepared only by an attorney licensed to practice law in this state who prepared any instrument in the chain of title to the subject real estate.

(b) The affidavit of scrivener's error shall be sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, and shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated.

(c) If requested, the chancery clerk shall make a marginal notation on the instrument to which the affidavit refers.

(3) Any affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving the instrument to which it relates or the title to the real estate affected by the instrument and shall be prima facie evidence of the facts stated therein and the marketability of the title to real estate.

[Effective from and after July 1, 2021, this section will read:]

(1) Any affidavit containing a statement relating to the identification, the marital status, the heirship, the relation, the death or the time of death of any person who is a party to a document affecting the title to real property, or any affidavit relating to the identification of any corporation or other legal entity which is a party to a document affecting the title to real property, signed by the affiant and verified upon oath or affirmation before a notarial officer, shall be recordable in the land records in the office of the chancery clerk in the county where the real property is situated.

(2)(a) Notice of a typographical or other minor error in a document affecting the title to real property may be given by recording an affidavit containing a statement of scrivener's error. If an affidavit is conspicuously identified as an affidavit of scrivener's error, the chancery clerk shall index the affidavit in the general index under the names of the original parties to the document if they are identified in the affidavit, and in the sectional index as provided in the indexing instructions of the affidavit. Notice of the corrective information provided by the affiant is effective upon recordation. An affidavit under this paragraph (a) may be prepared only by an attorney licensed to practice law in this state who prepared any document in the chain of title to the subject real property.

(b) The affidavit of scrivener's error shall be signed by the affiant and verified upon oath or affirmation before a notarial officer, and shall be recordable in the land records in the office of the chancery clerk in the county where the real property is situated.

(c) If requested, the chancery clerk shall make a marginal notation on the document to which the affidavit refers.

(3) Where title to homestead property is in the titled spouse, the nontitled spouse, in lieu of joining the titled spouse in executing a conveyance, mortgage, deed of trust or other encumbrance upon a homestead, may file an affidavit of nonhomestead verified upon oath or affirmation that either: (a) the nontitled spouse, together with the titled spouse, freely and voluntarily abandoned the old homestead and secured and currently together occupy a new homestead residence; or (b) the nontitled spouse freely and voluntarily separated from the titled spouse with no intent to return to the titled spouse or to reside with the

titled spouse, either temporarily or permanently, on the titled spouse's homestead, and the nontitled spouse currently maintains and occupies a separate residence.

(4) A person who knowingly makes or causes to be made a false statement in an affidavit is guilty of perjury and liable for the actual damages suffered or incurred by any person as a result or consequence of the making of or reliance upon the false affidavit. The court may award punitive damages, costs and attorney's fees.

(5) From and after July 1, 2021, an affidavit recorded under this section must include a description of the real property covered by the affidavit.

(6) Any affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving the document to which it relates or the title to the real property affected by the document and shall be prima facie evidence of the facts stated therein and the marketability of the title to real property.

HISTORY: Laws, 2007, ch. 444, § 1; Laws, 2013, ch. 461, § 1, eff from and after passage (approved Mar. 25, 2013); Laws, 2020, ch. 382, § 33, eff from and after July 1, 2021.

Amendment Notes — The 2013 amendment added (2) and redesignated former (2) as (3).

The 2020 amendment, effective July 1, 2021, substituted "real property" for "real estate" and "document" for "instrument" throughout (1), (2) and (6); in (1), inserted "containing a statement," and substituted "signed by the affiant and verified upon oath or affirmation before a notarial officer" for "duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state"; in (2)(a), inserted "containing a statement"; rewrote (2)(b), which read: "The affidavit of scrivener's error shall be sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, and shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated"; and added (3) through (5), and redesignated former (3) as (6).

§ 89-5-13. Instruments of conveyance recorded for seven and ten years; acknowledgment valid.

JUDICIAL DECISIONS

1. In general.

Chancery court erred in relying on Miss. Code Ann. § 89-5-13 to find that two deeds were effective on the dates reflected in the acknowledgments, without addressing uncontradicted testimony regarding the intent of the parties or considering when the deeds were delivered and accepted. Morrow v. Morrow, 129 So. 3d 142, 2013 Miss. LEXIS 546 (Miss. 2013).

§ 89-5-21. Entry of satisfaction upon record of mortgage or deed of trust.

JUDICIAL DECISIONS

3. Miscellaneous.

To the extent one of a bank's deeds of trust was secondary to a lienholder's deed of trust by virtue of the filing date, equitable subrogation applied because the bank's loan was secured by a corresponding deed of trust for the same property, which was allowed to be pledged by the same person for the debt of a family member's company and the bank never cancelled its other deeds of trust. Pennington Group, LLC v. PriorityOne Bank, 228 So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

Chancery court properly found that the foreclosure a lienholder conducted was subject to the first priority lien position of a bank because the bank had a priority lien by virtue of its prior deeds of trust; it would be inequitable to hold that the bank lost its priority lien position to the lienholder, the wife and mother of the debtors to whom the bank showed favor by stopping its foreclosure proceedings and issuing another loan, a loan whose purpose was to refinance a business debt. Pennington Group, LLC v. PriorityOne Bank, 228 So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

§ 89-5-24. Form of certain documents or instruments presented for recording; contents; exempt documents or instruments; additional recording fee for nonconforming documents or instruments.

(1) Except as otherwise provided in subsections (3) and (4), any document or instrument presented to the clerk of the chancery court for recording shall meet the following requirements:

(a) Each document or instrument shall consist of one or more individual pages printed only on one (1) side. The document or instrument shall not consist of pages that are permanently bound or in a continuous form and shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

(b) All documents must be printed or typed in a font no smaller than ten-point in size. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type smaller than ten-point type, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

(c) Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of

paragraph (b) and shall be recorded contemporaneously as additional pages of the document or instrument.

(d) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

(e) All signatures on a document or instrument shall be in black or blue ink and of sufficient color and clarity to ensure that the signatures are of sufficient legibility to produce a clear reproduction when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as required in this paragraph does not invalidate the document or instrument.

(f) The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three (3) inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths (¾) of one (1) inch. Nonessential information including, but not limited to, form numbers or customer notations may be placed in a margin other than the top margin. A document may be recorded if a minor portion of a seal or incidental writing extends into a margin. The recorder shall not incur any liability for failure to show a seal or information that extends beyond the margin of the permanent archival record.

(2) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, that is presented for recording and that contains any of the following information shall have that information on the first page below the three-inch margin:

(a) The name, physical business mailing address and business or employment telephone number of the individual who prepared the document; and the name, mailing address and telephone number of every grantor, grantee, borrower, beneficiary, trustee or other party to the instrument.

(b) A return address.

(c) The title of the document or instrument.

(d) Any address and telephone number required by Section 27-3-51, Mississippi Code of 1972.

(e) The legal description of the property or indexing instruction per Section 89-5-33(3). If there is insufficient space on the first page for the entire legal description or the entire indexing instruction, immediately succeeding pages shall be used.

(3) The following documents or instruments are exempt from the format requirements of this section:

(a) A document or instrument that was executed before July 1, 2009.

(b) A military separation document or instrument.

(c) A document or instrument executed outside the United States.

(d) A certified copy of a document or instrument issued by a court or governmental agency, including a vital record.

(e) A document or instrument where one (1) of the original parties is deceased or otherwise incapacitated.

(f) A document or instrument formatted to meet court requirements.

(g) A federal tax lien.

(h) A filing under the Uniform Commercial Code.

(4) The recorder shall record a document or instrument that does not substantially conform to the format standards specified in subsections (1) and (2) of this section upon payment of an additional recording fee of Ten Dollars ($10.00) per document or instrument. The fee shall be charged only for documents or instruments dated on or after July 1, 2009; this fee may not be charged for those documents or instruments specifically exempted in subsection (3).

(5) Failure to conform to the format standards specified in this section does not affect the validity or enforceability of the document or instrument.

HISTORY: Laws, 2008, ch. 508, § 1; Laws, 2011, ch. 416, § 1; Laws, 2014, ch. 309, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added "the name, mailing address and telephone number" following "prepared the document" in (2)(a).

§ 89-5-37. Name of beneficiary must be disclosed in mortgage or deed of trust to be recorded; exception.

JUDICIAL DECISIONS

1. In general.

Prohibition against notice by an improperly recorded deed of trust applies to constructive notice only and would not prevent actual notice. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

Beneficiary deed of trust was not void because it identified the note, date of the note, and payment schedule, and thus, the beneficiary could, with simple review, have been reasonably certain. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

Chancery court properly granted a lender's successor summary judgment in its action seeking a declaratory judgment that it held a first-priority deed of trust on real property because there was no genuine issue of material fact that the successor had actual knowledge of the defective deed of trust or a beneficiary's lien; the managing member of the settlement agent for the lender swore that the lender had no knowledge of any other deed of trust. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

District court did not err in finding that Mortgage Electronic Registration Systems, Inc. (MERS), validly assigned the deed of trust on the homeowners' home to the lender, which in turned assigned the home to another lender, the company that ultimately sold the homeowners' home via foreclosure sale; under governing state law, the appellate court therefore must enforce the clear terms of the deed of trust that empowered MERS to make subse-

quent assignments. Burton v. Nationstar Mortg., LLC, 642 Fed. Appx. 422, 2016 U.S. App. LEXIS 5890 (5th Cir. Miss. 2016).

§ 89-5-45. Substitution of trustee must appear of record; general substitution allowed for certain beneficiaries.

JUDICIAL DECISIONS

5. Miscellaneous.

Trustee did not lack authority to conduct a foreclosure sale because the initial deed of trust named him as trustee the record was devoid of any substitution of a trustee. Hall v. Green Tree Servicing, LLC, 210 So. 3d 1002, 2015 Miss. App. LEXIS 157 (Miss. Ct. App. 2015).

CHAPTER 7.

LANDLORD AND TENANT

Sec.

89-7-27. Proceedings against tenant holding over.
89-7-29. Affidavit to remove.
89-7-31. Issuance of summons; notice that landlord may dispose of tenant's personal property if judge awards exclusive possession of premises.
89-7-35. Issuance of warrant for removal.
89-7-39. Continuances, subpoenas.
89-7-41. Form of judgment for landlord; disposition of tenant's abandoned personal property.
89-7-45. When warrant for removal may issue in cases of nonpayment of rent.
89-7-49. Proceedings when tenant deserts premises.
89-7-51. Lien of landlord.
89-7-57. How obtained.
89-7-61. Writ.
89-7-69. Goods sold if not replevied.

§ 89-7-25. Tenant holding after notice liable for double rent.

JUDICIAL DECISIONS

4. Recovery of double rent.

Father was not entitled to judgment against his children's mother and the children for a rent arrearage, when he purportedly revoked his "gift" to them of the house they lived in because, (1) he could not show any arrearage of rent, (2) he could not recover double rent, and (3) he was not a traditional landlord but a father seeking to obtain damages for his son's failure to vacate the father's property. Turnage v. Brooks, — So. 3d —, 2020 Miss. App. LEXIS 403 (Miss. Ct. App. July 28, 2020).

§ 89-7-27. Proceedings against tenant holding over.

A tenant or lessee at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands, or tenements, and the assigns, undertenants, or legal representatives of such tenant or lessee, shall be removed from the premises by the judge of the county court, any justice of the peace of the

county, or by the mayor or police justice of any city, town, or village where the premises, or some part thereof, are situated, in the following cases, to wit:

First. Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.

Second. After any default in the payment of the rent pursuant to the agreement under which such premises are held, and when complete satisfaction of the rent and any late fees due cannot be obtained by distress of goods, and three (3) days' notice, in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to the rent on the person who owes the rent.

Third. If a written agreement between the landlord and tenant exists, any event calling for eviction in the agreement may trigger the eviction process under this section. Notice of default by email or text message is proper if the party has agreed in writing to be notified by that means.

HISTORY: Codes, 1857, ch. 41, art. 27; 1871, § 1646; 1880, § 1333; 1892, § 2547; 1906, § 2885; Hemingway's 1917, § 2383; 1930, § 2226; 1942, § 948; Laws, 2018, ch. 446, § 1, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment, in the first paragraph, deleted "(1)" preceding "or more years" and substituted "shall be removed" for "may be removed"; in the paragraph captioned "Second," inserted "complete" and "and any late fees due" and substituted "who owes the rent" for "owing the same"; and added the paragraph captioned "Third."

§ 89-7-29. Affidavit to remove.

The landlord or lessor, his legal representatives, agents, or assigns, in order to have the benefit of such proceedings, shall present to the court a sworn affidavit that contains the facts which, according to Section 89-7-27, require the removal of the tenant, describing in the affidavit the premises claimed and the amount of rent and any late fees due and when payable, and that the necessary notice has been given to terminate such tenancy. These facts shall be based on the rental agreement signed or agreed to by the landlord or lessor, his legal representatives, agents, or assigns, and the tenant. Upon receipt of the sworn affidavit, the court shall initiate the removal of the tenant for the nonpayment of rent or other event of default contained in any written agreement between the parties, as specified in the affidavit.

HISTORY: Codes, 1857, ch. 41, art. 28; 1871, § 1648; 1880, § 1334; 1892, § 2548; 1906, § 2886; Hemingway's 1917, § 2384; 1930, § 2227; 1942, § 949; Laws, 2018, ch. 446, § 2, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment rewrote the section, which read: "The landlord or lessor, his legal representatives, agents, or assigns, in order to have the benefit of such proceedings, shall make oath or affirmation of the facts which, according to the last preceding section, authorize the removal of the tenant, describing therein the premises claimed and the amount of rent due and when payable, and that the necessary notice has been given to terminate such tenancy."

§ 89-7-31. Issuance of summons; notice that landlord may dispose of tenant's personal property if judge awards exclusive possession of premises.

(1) On receiving the affidavit, the county judge, justice court judge, municipal judge, or other officer shall issue a summons, directed to the sheriff or any constable of the county, or the marshal of the municipality in which the premises, or some part thereof, are situated, describing the premises, and commanding him to require the person in possession of the same or claiming the possession thereof, immediately to remove from the premises, or to show cause before the justice court judge or other officer, on a day to be named in the summons, why possession of the premises should not be delivered to the applicant.

(2) In addition to other information required for the summons, the summons shall state: "At the hearing, a judge will determine if the landlord is granted exclusive possession of the premises. If the judge grants possession of the premises to the landlord and you do not remove your personal property, including any manufactured home, from the premises before the date and time ordered by the judge, then the landlord may dispose of your personal property without any further legal action."

HISTORY: Codes, 1857, ch. 41, art. 29; 1871, § 1649; 1880, § 1335; 1892, § 2549; 1906, § 2887; Hemingway's 1917, § 2385; 1930, § 2228; 1942, § 950; Laws, 2015, ch. 395, § 1, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 1, eff from and after passage (approved March 22, 2019).

Amendment Notes — The 2015 amendment, in (1), substituted "justice court judge, municipal judge" for "justice, mayor," "municipality in which" for "city, town, or village wherein," "immediately to remove from the premises" for "forthwith to remove therefrom" and "justice court judge" for "justice"; and added (2).

The 2019 amendment, effective March 22, 2019, substituted "to be named in the summons" for "to be named not less than three (3) nor more than five (5) days from the date of the summons" in (1).

§ 89-7-35. Issuance of warrant for removal.

(1) If, at the time appointed, it appears that the summons has been duly served, and if a judgment of eviction is granted, the magistrate shall issue a warrant to the sheriff or any constable of the county, or to a marshal of the municipality in which the premises, or some part thereof, are situated, immediately upon request, except when prohibited or otherwise provided under Section 89-7-45, commanding him to remove all persons from the premises, and to put the applicant into full possession thereof.

(2) If the summons complied with the requirements of Section 89-7-31(2) and if the tenant has failed to remove any of tenant's personal property, including any manufactured home, from the premises, then, if the judge has not made some other finding regarding the disposition of any personal property in the vacated premises, the personal property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

HISTORY: Codes, 1857, ch. 41, art. 31; 1871, § 1651; 1880, § 1337; 1892, § 2551; 1906, § 2889; Hemingway's 1917, § 2387; 1930, § 2230; 1942, § 952; Laws, 2015, ch. 395, § 2, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 2, eff from and after passage (approved March 22, 2019).

Amendment Notes — The 2015 amendment substituted "municipality in which" for "city, town, or village where", in (1); added (2); and made minor stylistic changes.

The 2019 amendment, effective March 22, 2019, in (1), substituted "a judgment of eviction is granted" for "sufficient cause is not shown to the contrary" and inserted "immediately upon request, except when prohibited or otherwise provided under Section 89-7-45."

§ 89-7-39. Continuances, subpoenas.

The court may, at the request of either party, adjourn the hearing from time to time, a single adjournment not to exceed ten (10) days, except by consent, and may issue subpoenas and attachments to compel the attendance of witnesses. However, in hearings for eviction, no adjournment shall extend the entire hearing beyond forty-five (45) days from the date the eviction action was filed.

HISTORY: Codes, 1857, ch. 41, art. 35; 1871, § 1655; 1880, § 1339; 1892, § 2553; 1906, § 2891; Hemingway's 1917, § 2389; 1930, § 2232; 1942, § 954; Laws, 2018, ch. 446, § 3, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment substituted "court" for "magistrate" and "a single adjournment" for "one adjournment" and added the last sentence.

§ 89-7-41. Form of judgment for landlord; disposition of tenant's abandoned personal property.

(1) If the decision is in favor of the landlord or other person claiming the possession of the premises, the magistrate shall issue a warrant to the sheriff, constable, or other officer immediately upon request, except when prohibited or otherwise provided under Section 89-7-45, commanding him immediately to put the landlord or other person into possession of the premises, and to levy the costs of the proceedings of the goods and chattels, lands and tenements, of the tenant or person in possession of the premises who shall have controverted the right of the landlord or other person.

(2) If the summons complied with the requirements of Section 89-7-31(2) and if the tenant has failed to remove any of tenant's personal property, including any manufactured home, from the premises, then, if the judge has not made some other finding regarding the disposition of any personal property in the vacated premises, the personal property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

HISTORY: Codes, 1857, ch. 41, art. 36; 1871, § 1656; 1880, § 1340; 1892, § 2554; 1906, § 2893; Hemingway's 1917, § 2390; 1930, § 2233; 1942, § 955; Laws, 2015, ch. 395, § 3, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 3, eff from and after passage (approved March 22, 2019).

Amendment Notes — The 2015 amendment substituted "immediately" for "forthwith" in (1); added (2); and made minor stylistic changes.

The 2019 amendment, effective March 22, 2019, in (1), inserted "immediately upon request, except when prohibited or otherwise provided under Section 89-7-45"; and made a gender neutral change.

§ 89-7-45. When warrant for removal may issue in cases of nonpayment of rent.

If a judgment of eviction is founded solely upon the nonpayment of rent and, at the time of the request for the warrant for removal the full and complete amount of rent due, including any late fees as provided in the rental agreement that have accrued as of the date of judgment, and the costs of the proceedings, have been paid to the person entitled to the rent, the magistrate shall not issue a warrant for removal. If the rent, late fees and costs have not been paid in full at the time of the request for the warrant for removal, the magistrate must immediately issue the warrant for removal unless the judge determines that, for good cause shown, a stay not to exceed three (3) days would best serve the interests of justice and equity. If it is shown that a stay is likely to result in material injury to the property of the person entitled to the rent, no stay shall be granted.

HISTORY: Codes, 1857, ch. 41, art. 38; 1871, § 1658; 1880, § 1342; 1892, § 2556; 1906, § 2894; Hemingway's 1917, § 2392; 1930, § 2235; 1942, § 957; Laws, 2018, ch. 446, § 4, eff from and after July 1, 2018; Laws, 2019, ch. 386, § 4, eff from and after passage (approved March 22, 2019).

Amendment Notes — The 2018 amendment substituted "warrant is actually" for "warrant be actually," inserted "full and complete amount of" and "including any late fees...as provided in the rental agreement" and deleted "or give such security as shall be satisfactory to the magistrate" preceding "to the person entitled to the rent."

The 2019 amendment, effective March 22, 2019, rewrote the section, which read: "If the proceedings be founded upon the nonpayment of rent, the issuance of the warrant for the removal of the tenant shall be stayed if the person owing the rent shall, before the warrant is actually issued, pay the full and complete amount of rent due, including any late fees that have accrued as a result of the nonpayment of rent as provided in the rental agreement, and the costs of the proceedings, to the person entitled to the rent, for the payment thereof and costs in ten (10) days; and if the rent and costs shall not be paid accordingly, the warrant shall then issue as if the proceedings had not been stayed."

§ 89-7-49. Proceedings when tenant deserts premises.

If a tenant of lands, being in arrear for rent, shall desert the demised premises and leave the same uncultivated or unoccupied, so that a sufficient distress cannot be had to satisfy the arrears of rent, any constable of the county may, at the request of the landlord, and upon due proof by affidavit that the premises have been deserted, leaving rent in arrear, and not sufficient distress thereon, go upon and view the premises, and upon being satisfied that the premises have been so deserted, he shall affix a notice, in writing, upon a conspicuous part of the premises, stating what day he will return to take a

second view thereof, not less than five (5) days nor more than fifteen (15) days thereafter, and requiring the tenant then to appear and pay the rent and any late fees due. At the time specified in the notice the constable shall again view the premises, and if, upon second view, the tenant shall not pay the rent and any late fees due, or there shall not be sufficient distress upon the premises, then the justice court shall immediately or within forty-eight (48) hours put the landlord in possession of the premises, and the lease thereof to such tenant shall become void. The tenant may appeal to the circuit court from the proceedings of the justice court at any time within thirty (30) days after possession delivered, by serving notice in writing thereof upon the landlord, and by giving bond, with sufficient sureties, to be approved by the justice court, for the payment to the landlord of the costs of appeal, which may be adjudged against the tenant; and thereupon the justice court shall return the proceedings before him to the next term of the circuit court, and the court shall, at the return term, examine the proceedings in a summary way, and may order restitution to be made to the tenant, with costs of appeal, to be paid by the landlord; or in case of affirming the proceedings, shall award costs against the tenant and sureties in his bond.

HISTORY: Codes, 1857, ch. 41, art. 24; 1871, § 1643; 1880, § 1332; 1892, § 2546; 1906, § 2884; Hemingway's 1917, § 2382; 1930, § 2237; 1942, § 959; Laws, 1990, ch. 404, § 1, eff from and after July 1, 1990; Laws, 2018, ch. 446, § 5, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment inserted "and any late fees" in the first and second sentences; substituted "justice court shall immediately or within forty-eight (48) hours put the landlord" for "justice court may put the landlord"; and made a minor stylistic change.

§ 89-7-51. Lien of landlord.

(1) Every lessor of land shall have a lien on the agricultural products of the leased premises, however and by whomsoever produced, to secure the payment of the rent and of money advanced to the tenant, and the fair market value of all advances made by him to his tenant for supplies for the tenant and others for whom he may contract, and for his business carried on upon the leased premises. This lien shall be paramount to all other liens, claims, or demands upon such products when perfected in accordance with Uniform Commercial Code Article 9 – Secured Transactions (Section 75-9-101 et seq.). The claim of the lessor for supplies furnished may be enforced in the same manner and under the same circumstances as his claim for rent may be; and all the provisions of law as to attachment for rent and proceedings under it shall be applicable to a claim for supplies furnished, and such attachment may be levied on any goods and chattels liable for rent, as well as on the agricultural products.

(2) All articles of personal property, except a stock of merchandise sold in the normal course of business, owned by the lessee of real property and situated on the leased premises shall be subject to a lien in favor of the lessor

to secure the payment of rent for such premises as has been contracted to be paid, whether or not then due. This lien shall be subject to all prior liens or other security interests perfected according to law. No such articles of personal property may be removed from the leased premises until such rent is paid except with the written consent of the lessor. All of the provisions of law as to attachment for rent and proceedings thereunder shall be applicable with reference to the lessor's lien under this subsection.

HISTORY: Codes, 1880, § 1301; 1892, § 2495; 1906, § 2832; Hemingway's 1917, § 2330; 1930, § 2186; 1942, § 908; Laws, 1972, ch. 343, § 1; Laws, 2001, ch. 495, § 34; Laws, 2015, ch. 395, § 5, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment substituted "This lien" for "Such lien" in (2) and made a minor stylistic change.

JUDICIAL DECISIONS

ANALYSIS

9. Priority of lien.
12. Miscellaneous.

9. Priority of lien.

Two lessors did not have priority over a bank with a perfected lien on a lessee's government payments, even though the bank had actual notice of the leases before it loaned money to the lessee as: (1) Miss. Code Ann. § 75-9-109(a)(2) applied to agricultural liens; (2) perfection of agricultural liens was required under Miss. Code Ann. §§ 89-7-51(1) and 75-9-101 et seq.; (3) the lessors did not perfect their liens; (4) there was no fact issue as to whether there was confidential relationship between the bank and the lessors for constructive trust purposes; and (5) the bank was not unjustly enriched as it was entitled to apply the government payments to the lessee's loan. Pair A Dice Farms, Inc. v. InSouth Bank of Covington, 118 So. 3d 165, 2012 Miss. App. LEXIS 802 (Miss. Ct. App. 2012), cert. denied, 2013 Miss. LEXIS 387 (Miss. July 25, 2013), cert. denied, 117 So. 3d 330, 2013 Miss. LEXIS 388 (Miss. 2013).

12. Miscellaneous.

Render of judgment in favor of a tenant on the tenant's unlawful-reentry issue was appropriate because the evidence showed that the landlord acted without authority in using self-help to reenter the leased property, as the lease did not provide for such action, and failed to provide the tenant with a notice and hearing before reentering the property. Crowell v. Butts, 153 So. 3d 719, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. 2013), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 395 (Miss. 2014), aff'd in part and rev'd in part, 153 So. 3d 684, 2014 Miss. LEXIS 530 (Miss. 2014).

§ 89-7-55. Attachment for rent and supplies; who entitled to and for what.

JUDICIAL DECISIONS

1. In general.

Render of judgment in favor of a tenant on the tenant's unlawful-reentry issue was appropriate because the evidence showed that the landlord acted without authority in using self-help to reenter the leased property, as the lease did not provide for such action, and failed to provide the tenant with a notice and hearing before reentering the property. Crowell v. Butts, 153 So. 3d 719, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. 2013), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 395 (Miss. 2014), aff'd in part and rev'd in

part, 153 So. 3d 684, 2014 Miss. LEXIS 530 (Miss. 2014).

§ 89-7-57. How obtained.

To obtain the attachment or distress, the party entitled thereto, his agent or attorney, shall make complaint on oath before a justice court judge averring the facts which entitle the party seeking it to the remedy; and, if anything is demanded on account of supplies, there shall be filed with the complaint an itemized bill of particulars thereof. The complainant shall enter into bond with sufficient sureties, payable to the tenant, his executor or administrator, in a penalty equal to double the sum claimed to be due, conditioned to pay all damages as may be sustained by the obligee by the wrongful suing out of the writ, and all costs that may be awarded against the principal obligor.

HISTORY: Codes, 1892, § 2502; 1906, § 2839; Hemingway's 1917, § 2337; 1930, § 2189; 1942, § 911; Laws, 2015, ch. 395, § 6, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment, substituted "justice court judge" for "justice of the peace" in the first sentence and made minor stylistic changes.

§ 89-7-61. Writ.

When the complaint has been made and bond given and approved by the justice court judge, it shall be his duty to issue a distress warrant or attachment-writ, commanding the seizure of the agricultural products, if any, upon which the party instituting the proceedings shall have claimed a lien, and also commanding the officer to distrain the goods and chattels other than the agricultural products of the tenant, if necessary, and deal with the same as provided by law; the entire seizure and distraint to be of value sufficient to satisfy the sum demanded with interest and costs.

HISTORY: Codes, 1892, § 2504; 1906, § 2841; Hemingway's 1917, § 2339; 1930, § 2191; 1942, § 913; Laws, 2015, ch. 395, § 7, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment, substituted "has been made" for "shall have been made" and "justice court judge" for "justice" and made minor stylistic changes.

§ 89-7-69. Goods sold if not replevied.

The officer making a distress or seizure shall give notice thereof, with the cause of taking, to the tenant or his representative in person if found, or if not found, by leaving the notice at the dwelling house or other conspicuous place on the premises charged with the rent distrained for, and shall immediately advertise the property distrained or seized for sale as if under execution; and if the tenant or owner of the goods distrained or seized shall not, before the time appointed for the sale, replevy the same by giving bond with sufficient sureties, to be approved by such officer, payable to the plaintiff in the attachment, in double the amount claimed, conditioned for the payment of the

sum demanded, with lawful interest for the same, and costs, at the end of three (3) months after making the distress, the officer shall sell the goods and chattels distrained or seized at public sale to the highest bidder for cash, and shall, out of the proceeds of the sale, pay the costs of the proceedings, and shall pay to the plaintiff the amount of his demand, with interest.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(2); 1857, ch. 41, art. 2; 1871, § 1621; 1880, § 1303; 1892, § 2508; 1906, § 2845; Hemingway's 1917, § 2343; 1930, § 2195; 1942, § 917; Laws, 2015, ch. 395, § 8, eff from and after July 1, 2015.

Amendment Notes — The 2015 amendment, substituted "immediately" for "forthwith" and made minor stylistic changes.

CHAPTER 8.

RESIDENTIAL LANDLORD AND TENANT ACT

Sec.

89-8-7. Definitions; agent of landlord.
89-8-13. Right to terminate tenancy for breach; notice of breach; return of prepaid rent and security; disposition of tenant's abandoned personal property.

§ 89-8-7. Definitions; agent of landlord.

(1) Subject to additional definitions contained in subsequent sections of this chapter which apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:

(a) "Building and housing codes" includes any law, ordinance, or governmental regulation concerning fitness for habitation, construction, maintenance, operation, occupancy or use of any premises or dwelling unit;

(b) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(c) "Good faith" means honesty in fact in the conduct of the transaction concerned and observation of reasonable community standards of fair dealing;

(d) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, or the agent representing such owner, lessor or sublessor;

(e) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(f) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession;

(g) "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(h) "Rent" means all payments to be made to the landlord under the rental agreement, including any late fees that are required to be paid under the rental agreement by a defaulting tenant;

(i) "Rental agreement" means all agreements, written or oral, except to the extent an agreement under this chapter or Chapter 7, Title 89, Mississippi Code of 1972, must be in writing, and valid rules and regulations adopted under Section 89-8-11 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(j) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(k) "Qualified tenant management organizations" means any organization incorporated under the Mississippi Nonprofit Corporation Act, a majority of the directors of which are tenants of the housing project to be managed under a contract authorized by this section and which is able to conform to standards set by the United States Department of Housing and Urban Development as capable of satisfactorily performing the operational and management functions delegated to it by the contract.

(2) For purposes of giving any notice required under this chapter, notice given to the agent of the landlord is equivalent to giving notice to the landlord. The landlord may contract with an agent to assume all the rights and duties of the landlord under this chapter; provided, however, that such a contract does not relieve the landlord of ultimate liability in regard to such rights and duties.

HISTORY: Laws, 1991, ch. 478, § 4, eff from and after July 1, 1991; Laws, 2018, ch. 446, § 6, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment added "including any late fees...by a defaulting tenant" in (h); and added the exception near the beginning of (i).

§ 89-8-13. Right to terminate tenancy for breach; notice of breach; return of prepaid rent and security; disposition of tenant's abandoned personal property.

(1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(3) The nonbreaching party may deliver a notice to the party in breach in writing, or by email or text message if the breaching party has agreed in

writing to be notified by email or text message, specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen (14) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of fourteen (14) days; and the rental agreement shall terminate and the tenant shall surrender possession as provided in the notice subject to the following:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate;

(b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the nonbreaching party may terminate the rental agreement upon at least fourteen (14) days' notice in writing, or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the breach and the date of termination of the rental agreement;

(c) Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent.

(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

(5)(a) If the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord shall not be required to deliver fourteen (14) days' notice as provided by subsection (3) of this section. In such event, the landlord may seek removal of the tenant from the premises in the manner and with the notice prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

(b) Any justice court judge or other judge presiding over a hearing in which a landlord seeks to remove a tenant for the nonpayment of rent shall abide by the provisions of the rental agreement that was signed by the landlord and the defaulting tenant.

(6) Disposition of personal property, including any manufactured home, of a tenant remaining on the landlord's premises after the tenant has been removed from the premises shall be governed by Section 89-7-35(2) or Section 89-7-41(2).

HISTORY: Laws, 1991, ch. 478, § 7; Laws, 1993, ch. 312, § 2; Laws, 2015, ch. 395, § 4, eff from and after July 1, 2015; Laws, 2018, ch. 446, § 7, eff from and after July 1, 2018.

Amendment Notes — The 2015 amendment added (6).

The 2018 amendment rewrote the introductory paragraph of (3), which read: "The nonbreaching party may deliver a written notice to the party in breach specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of thirty (30) days; and the rental agreement shall terminate and the tenant shall surrender possession as

provided in the notice subject to the following:"; in (3)(b), deleted "written" preceding "notice" and inserted "in writing, or by email...or text message" thereafter; in (5), deleted "Notwithstanding the provisions of this section or any other provisions of this chapter to the contrary," from the beginning, designated the remainder of former (5) as (a) and substituted "deliver fourteen (14) days' notice" for "deliver thirty (30) days' written notice" therein, and added (b); and made a minor stylistic change.

CHAPTER 12.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Sec.
89-12-59. Certain unclaimed United States savings bonds escheat to state; procedures.

§ 89-12-59. Certain unclaimed United States savings bonds escheat to state; procedures.

(1) Notwithstanding the provisions of any other section of law, United States savings bonds which are unclaimed property and subject to the provisions of this chapter shall escheat to the State of Mississippi three (3) years after becoming unclaimed property by virtue of the provisions of this chapter, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall vest solely in the State of Mississippi according to the procedure set forth in subsections (2) through (5) of this section.

(2) Within one hundred eighty (180) days after the three (3) years prescribed in subsection (1) of this section, if no claim has been filed in accordance with the provisions of this chapter for such United States savings bonds, the State Treasurer shall commence a civil action in the Circuit Court of the First Judicial District of Hinds County for a determination that such United States savings bonds shall escheat to the State of Mississippi. The State Treasurer may postpone the bringing of such action until sufficient United States savings bonds have accumulated in the State Treasurer custody to justify the expense of such proceedings.

(3) If no person shall file a claim or appear at the hearing to substantiate a claim or where the court determines that a claimant is not entitled to the property claimed by such claimant, then the court, if satisfied by evidence that the State Treasurer has substantially complied with the laws of the State of Mississippi, shall enter a judgment that the subject United States savings bonds have escheated to the State of Mississippi, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall vest solely in the State of Mississippi.

(4) The State Treasurer shall redeem such United States savings bonds escheated to the State of Mississippi and the proceeds from such redemption of

United States savings bonds shall be deposited in the State General Fund. The State Treasurer shall not deposit the proceeds from the redemption of the United States savings bonds in the Abandoned Property Fund or the Abandoned Property Claims Payment Fund in accordance with the provisions of Section 89-12-37.

(5) Any person making a claim for the United States savings bonds escheated to the State of Mississippi under this subsection, or for the proceeds from such bonds, may file a claim in accordance with the provisions of this chapter. Upon providing sufficient proof of the validity of such person's claim, the State Treasurer may pay such claim in accordance with the provisions of this chapter.

HISTORY: Laws, 2014, ch. 431, § 8, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference by substituting "this chapter" for "Section 89-12-57 et seq." and making related punctuation changes throughout the section. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes — This section was added by Section 8, Laws of 2014, ch. 431, effective from and after July 1, 2015. The effective date of Laws of 2014, ch. 431, was subsequently amended by Laws of 2014, ch. 477, § 7, which provides:

"SECTION 7. Section 9 of Senate Bill No. 2796, 2014 Regular Session [Chapter 431], is amended as follows:

"Section 9. Section 8 of this act shall take effect and be in force from and after July 1, 2014, and the remaining sections of this act shall take effect and be in force from and after July 1, 2015."

CHAPTER 13.

PARTY FENCES

§ 89-13-1. Adjoining owners to contribute.

JUDICIAL DECISIONS

1. In general.

There was no evidence that a fence that was constructed between the parties' properties was in fact a party fence within the meaning of Miss. Code Ann. § 89-13-1. Therefore, the chancery court erred in requiring plaintiffs to reimburse defendants for the cost of the fence that defendants constructed. Varnell v. Rogers, 198 So. 3d 1278, 2016 Miss. App. LEXIS 230 (Miss. Ct. App. 2016).

CHAPTER 21.

UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT [REPEALED]

Sec.

89-21-1 through 89-21-17. Repealed.

§§ 89-21-1 through 89-21-17. Repealed.

Repealed by Laws, 2020, ch. 406, § 88, eff from and after July 1, 2020.
§ 89-21-1. [Laws, 1994, ch. 618, § 9, eff from and after July 1, 1994.]
§ 89-21-3. [Laws, 1994, ch. 618, § 1, eff from and after July 1, 1994.]
§ 89-21-5. [Laws, 1994, ch. 618, § 2, eff from and after July 1, 1994.]
§ 89-21-7. [Laws, 1994, ch. 618, § 3, eff from and after July 1, 1994.]
§ 89-21-9. [Laws, 1994, ch. 618, § 4, eff from and after July 1, 1994.]
§ 89-21-11. [Laws, 1994, ch. 618, § 5, eff from and after July 1, 1994.]
§ 89-21-13. [Laws, 1994, ch. 618, § 6, eff from and after July 1, 1994.]
§ 89-21-15. [Laws, 1994, ch. 618, § 7, eff from and after July 1, 1994.]
§ 89-21-17. [Laws, 1994, ch. 618, § 8, eff from and after July 1, 1994.]

Editor's Notes — Former § 89-21-1 provided the short title.
Former § 89-21-3 provided for the right to disclaim interest in property.
Former § 89-21-5 provided for the rules governing time of disclaimer.
Former § 89-21-7 specified the form of disclaimer.
Former § 89-21-9 provided for the effect of disclaimer.
Former § 89-21-11 provided for waiver and bar of a property interest.
Former § 89-21-13 provided that the remedy provided by the chapter was not exclusive.
Former § 89-21-15 provided an applicability clause.
Former § 89-21-17 provided for uniformity of application and construction.

CHAPTER 22.

MISSISSIPPI UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT (2002/2010)

Sec.
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§ 89-22-1. Short title.

This chapter may be cited as the "Mississippi Uniform Disclaimer of Property Interests Act (2002/2010)."

HISTORY: Laws, 2020, ch. 406, § 67, eff from and after July 1, 2020.

§ 89-22-3. Definitions.

In this chapter:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property held in the name of two (2) or more persons under an arrangement in which all holders have concurrent interests and under which the last-surviving holder is entitled to the whole of the property. Jointly held property does not include property held as tenants by the entirety.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band or an Alaskan native village that is recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(A) An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) A trust created under a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

HISTORY: Laws, 2020, ch. 406, § 68, eff from and after July 1, 2020.

§ 89-22-5. Scope.

This chapter applies to disclaimers of any interest in or power over property, whenever created.

HISTORY: Laws, 2020, ch. 406, § 69, eff from and after July 1, 2020.

§ 89-22-7. Chapter supplemented by other law.

(a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

HISTORY: Laws, 2020, ch. 406, § 70, eff from and after July 1, 2020.

§ 89-22-9. Power to disclaim; general requirements; when irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To the extent there is no material conflict of interest, a parent, as defined in Section 93-15-103(h), can disclaim on behalf of the parent's minor or incapacitated child, if a conservator or guardian has not been appointed for the child.

(d) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in Section 89-22-25. In this subsection "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(e) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(f) A disclaimer becomes irrevocable when it is delivered or filed under Section 89-22-25 or when it becomes effective as provided in Sections 89-22-11 through 89-22-23 of this chapter, whichever occurs later.

(g) A disclaimer made under this chapter is not a transfer, assignment, or release.

(h) A person obligated to distribute an interest disclaimed under this chapter is not liable to any person for distributing the interest as if the interest

were not disclaimed unless the person obligated to distribute the interest receives a copy of the disclaimer before distributing the interest.

HISTORY: Laws, 2020, ch. 406, § 71, eff from and after July 1, 2020.

§ 89-22-11. Disclaimer of interest in property.

(a) In this section:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(2) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(b) Except for a disclaimer governed by Section 89-22-13, 89-22-15 or 89-22-17, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in paragraph (2), the following rules apply:

(A) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(B) If the disclaimant is an individual, except as otherwise provided in subparagraphs (C) and (D), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(C) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(D) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

HISTORY: Laws, 2020, ch. 406, § 72, eff from and after July 1, 2020.

§ 89-22-13. Disclaimer of rights of survivorship in jointly held property.

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or in part, the incremental portion of the jointly held property devolving to the surviving holder by right of survivorship.

(b) A disclaimer under subsection (a) of this section takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) If a disclaimer is made under subsection (a) of this section with only one (1) holder surviving the death of the holder to whose death the disclaimer relates, the incremental portion disclaimed shall, as a consequence of the disclaimer, pass as part of the estate of the deceased holder.

(d) If a disclaimer is made under subsection (a) of this section with two (2) or more of the holders surviving the death of the holder to whose death the disclaimer relates:

(1) The disclaimer does not sever the joint tenancy with respect to the jointly held property as among the surviving holders;

(2) The incremental portion disclaimed, as a consequence of a disclaimer, devolves to the surviving holders in proportion to their respective interests in the jointly held property excluding the disclaimant and any other surviving holder who disclaims to the extent of his, her or its disclaimer of the incremental portion;

(3) An incremental portion devolving to a surviving holder, as a consequence of one or more disclaimers, may be disclaimed by the surviving holder;

(4) To the extent that all of the surviving holders disclaim an incremental portion devolving to them, the portion shall instead pass as part of the estate of the deceased holder; and

(5)) The proportion of each of the surviving holders with respect to the jointly held property shall be adjusted to take into account the devolution of the incremental portion to the extent that the portion is disclaimed.

HISTORY: Laws, 2020, ch. 406, § 73, eff from and after July 1, 2020.

§ 89-22-15. Disclaimer of property held as tenants by the entirety.

(a) The survivorship interest in property held as a tenancy by the entirety to which the survivor succeeds by operation of law upon the death of the cotenant may be disclaimed as provided in this chapter. For purposes of this chapter only, the deceased tenant's interest in property held as a tenancy by the entirety shall be deemed to be an undivided one-half (1/2) interest.

(b) A disclaimer under subsection (a) takes effect as of the death of the deceased tenant to whose death the disclaimer relates.

(c) The survivorship interest in property held as a tenancy by the entirety disclaimed by the surviving tenant passes as if the disclaimant had predeceased the tenant to whose death the disclaimer relates.

HISTORY: Laws, 2020, ch. 406, § 74, eff from and after July 1, 2020.

§ 89-22-17. Disclaimer of interest by trustee.

(a) If a trustee disclaims an interest in property that otherwise would have become trust property:

(1) The interest does not become trust property;

(2) The disclaimer:

(A) Takes effect as of the time the trust became irrevocable; and

(B) Relates back for all purposes to the time the trust became irrevocable; and

(3) The disclaimed interest is not subject to the claims of any creditor of the trustee, the trust, or any trust beneficiary.

(b) If the instrument creating the disclaimed interest contains a provision that provides for the disposition of the interest if the interest were to be disclaimed, the disclaimed interest passes according to that provision.

(c) If the instrument creating the disclaimed interest does not contain a provision described by subsection (b), the disclaimed interest passes as if:

(1) All of the current beneficiaries, presumptive remainder beneficiaries, and contingent beneficiaries of the trust affected by the disclaimer who are individuals who died before the trust became irrevocable; and

(2) All beneficiaries of the trust affected by the disclaimer who are not individuals ceased to exist without successor organizations and without substitution of beneficiaries under the cy pres doctrine before the trust became irrevocable.

(d) Subsection (c) applies only for purposes of determining the disposition of an interest in property disclaimed by a trustee that otherwise would have become trust property and applies only with respect to the trust affected by the disclaimer. Subsection (c) does not apply with respect to other trusts governed by the instrument and does not apply for other purposes under the instrument or under the laws of intestacy.

HISTORY: Laws, 2020, ch. 406, § 75, eff from and after July 1, 2020.

§ 89-22-19. Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

HISTORY: Laws, 2020, ch. 406, § 76, eff from and after July 1, 2020.

§ 89-22-21. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

HISTORY: Laws, 2020, ch. 406, § 77, eff from and after July 1, 2020.

§ 89-22-23. Disclaimer of power held in fiduciary capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

HISTORY: Laws, 2020, ch. 406, § 78, eff from and after July 1, 2020.

§ 89-22-25. Delivery or filing.

(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) An annuity or insurance policy;

(2) An account with a designation for payment on death;

(3) A security registered in beneficiary form;

(4) A pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) Any other nonprobate transfer at death.

(b) Subject to subsections (c) through (*l*), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation which is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation or to such person's legal representative.

(g) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property or property held as tenants by the entirety, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d) or (e), as if the power disclaimed were an interest in property.

(*l*) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

HISTORY: Laws, 2020, ch. 406, § 79, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected an error in this section by renumbering the section number from 89-22-35 to 89-22-25. The Joint Committee ratified the correction at its October 19, 2020, meeting.

§ 89-22-27. When disclaimer barred or limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;

(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so provided by law other than this chapter.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

HISTORY: Laws, 2020, ch. 406, § 80, eff from and after July 1, 2020.

§ 89-22-29. Tax-qualified disclaimer.

(a) Notwithstanding any other provision of this chapter, if as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

(b) In order for a disclaimer made under the provisions of this chapter to be effective as a tax-qualified disclaimer under the provisions of Title 26 of the United States Code, the disclaimer must satisfy the conditions of Title 26, Section 2518 of the United States Code, as now or hereafter amended, including the requirement that the disclaimer be made generally within nine (9) months from the day the interest being disclaimed was created.

HISTORY: Laws, 2020, ch. 406, § 81, eff from and after July 1, 2020.

§ 89-22-31. Recording of disclaimer.

(a) A disclaimer of an interest in or relating to real property does not provide constructive notice to all persons unless the disclaimer contains a legal

description of the real property to which the disclaimer relates and unless the disclaimer is filed for recording in the office of the chancery clerk of the county or counties where the real property is located.

(b) An effective disclaimer meeting the requirements of subsection (a) constitutes constructive notice to all persons from and after the time of filing.

(c) Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

HISTORY: Laws, 2020, ch. 406, § 82, eff from and after July 1, 2020.

§ 89-22-33. Application to existing relationships.

Except as otherwise provided in Section 89-22-27, an interest in or power over property existing on the effective date of this chapter as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after July 1, 2020.

HISTORY: Laws, 2020, ch. 406, § 83, eff from and after July 1, 2020.

§ 89-22-35. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2020, ch. 406, § 84, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by renumbering the section number from 89-22-29 to 89-22-35. The Joint Committee ratified the correction at its October 19, 2020, meeting.

§ 89-22-37. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2020, ch. 406, § 85, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by renumbering the section number from 89-22-31 to 89-22-37. The Joint Committee ratified the correction at its October 19, 2020, meeting.

CHAPTER 25.

MISSISSIPPI UNIFORM STATUTORY RULE AGAINST PERPETUITIES

Sec.

89-25-1. Short title.
89-25-3. Statutory rule against perpetuities.
89-25-5. When nonvested property interest or power of appointment is created.
89-25-7. Reformation.
89-25-9. Exclusions from the statutory rule against perpetuities.
89-25-11. Prospective application.
89-25-13. Uniformity.
89-25-15. Supersession.

§ 89-25-1. Short title.

This chapter shall be known and may be referred to as the "Mississippi Uniform Statutory Rule Against Perpetuities."

HISTORY: Laws, 2015, ch. 414, § 1, eff from and after July 1, 2015.

§ 89-25-3. Statutory rule against perpetuities.

(1) A nonvested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive; or

(b) The interest either vests or terminates within ninety (90) years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one (21) years after the death of an individual then alive; or

(b) The condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one (21) years after the death of an individual then alive; or

(b) The power is irrevocably exercised or otherwise terminates within ninety (90) years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1) (a), (2) (a), or (3) (a) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of:

(a) The expiration of a period of time not exceeding twenty-one (21) years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(b) The expiration of a period of time that exceeds or might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement;

that language is inoperative to the extent that it produces a period of time that exceeds twenty-one (21) years after the death of the survivor of the specified lives.

HISTORY: Laws, 2015, ch. 414, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4) by inserting the word "is" between the words "death" and "disregarded" near the end of the subsection. The Joint Committee ratified the correction at its August 17, 2015, meeting.

§ 89-25-5. When nonvested property interest or power of appointment is created.

(1) Except as provided in subsections (2), (3) and (4) of this section and in Section 89-25-11(1), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(a) A nonvested property interest; or

(b) A property interest subject to a power of appointment described in Section 89-25-3(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

(4) For purposes of this chapter, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of the other nongeneral or testamentary power of appointment is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

HISTORY: Laws, 2015, ch. 414, § 3, eff from and after July 1, 2015.

§ 89-25-7. Reformation.

Upon petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety (90) years allowed by Section 89-25-3(1)(b), (2)(b) or (3)(b) or the three hundred sixty (360) years allowed in Section 89-25-9(h), if:

(a) A nonvested property interest or a power of appointment becomes invalid under Section 89-25-3;

(b) A class gift is not invalid, but might become invalid under Section 89-25-3, and the time has arrived when the share of any class member is to take effect in possession or enjoyment;

(c) A nonvested property interest that is not validated by Section 89-25-3(1)(a) can vest but not within ninety (90) years after its creation; or

(d) In the case of a trust which otherwise meets the requirements of Section 89-25-9(h), all beneficial interests in the trust can vest or the trust can terminate but not within three hundred sixty (360) years.

HISTORY: Laws, 2015, ch. 414, § 4, eff from and after July 1, 2015.

§ 89-25-9. Exclusions from the statutory rule against perpetuities.

Section 89-25-3 shall not apply to:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(i) A premarital or postmarital agreement;

(ii) A separation or divorce settlement;

(iii) A spouse's election;

(iv) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(v) A contract to make or not to revoke a will or trust;

(vi) A contract to exercise or not to exercise a power of appointment;

(vii) A transfer in satisfaction of a duty of support; or

(viii) A reciprocal transfer;

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(c) A power to appoint a fiduciary;

(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

(g) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or

(h) A trust:

(i) That is governed by the laws of this state;

(ii) That grants to the trustee the power to sell trust property; and

(iii) Which, pursuant to the terms of the trust instrument, does not exceed:

1. Three hundred sixty (360) years as to personal property; and
2. One hundred ten (110) years as to real property.

HISTORY: Laws, 2015, ch. 414, § 5, eff from and after July 1, 2015.

§ 89-25-11. Prospective application.

(1) Except as provided by subsection (2) of this section, this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2015. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before July 1, 2015 and is determined in a judicial proceeding, commenced on or after July 1, 2015, to violate this state's rule against perpetuities as that rule existed before July 1, 2015, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

HISTORY: Laws, 2015, ch. 414, § 6, eff from and after July 1, 2015.

§ 89-25-13. Uniformity.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

HISTORY: Laws, 2015, ch. 414, § 7, eff from and after July 1, 2015.

§ 89-25-15. Supersession.

This chapter supersedes the rule of the common law known as the rule against perpetuities.

HISTORY: Laws, 2015, ch. 414, § 8, eff from and after July 1, 2015.